

8157

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF SANTA BARBARA
3 SANTA MARIA BRANCH; COOK STREET DIVISION
4 DEPARTMENT SM-2 HON. RODNEY S. MELVILLE, JUDGE

5

6

7 THE PEOPLE OF THE STATE OF)

8 CALIFORNIA,)

9 Plaintiff,)

10 -vs-) No. 1133603

11 MICHAEL JOE JACKSON,)

12 Defendant.)

13

14

15

16

17 REPORTER'S TRANSCRIPT OF PROCEEDINGS

18

19 FRIDAY, APRIL 29, 2005

20

21 8:30 A.M.

22

23 (PAGES 8157 THROUGH 8202)

24

25

26

27 REPORTED MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304

28 BY: Official Court Reporter 8157

1 APPEARANCES OF COUNSEL:

2

3 For Plaintiff: THOMAS W. SNEDDON, JR.,

4 District Attorney BY: RONALD J. ZONEN,

5 Sr. Deputy District Attorney -and-

6 GORDON AUCHINCLOSS, Sr. Deputy District Attorney

7 1112 Santa Barbara Street Santa Barbara, California 93101

8

9

10 For Defendant: COLLINS, MESEREAU, REDDOCK & YU

11 BY: THOMAS A. MESEREAU, JR., ESQ. -and-

12 SUSAN C. YU, ESQ. 1875 Century Park East, Suite 700

13 Los Angeles, California 90067

14 -and-

15 SANGER & SWYSEN BY: ROBERT M. SANGER, ESQ.

16 233 East Carrillo Street, Suite C Santa Barbara, California 93101

17

18

19 For Witness DAVIS WRIGHT TREMAINE LLP

20 Ian Drew: BY: KELLI L. SAGER, ESQ. 865 South Figueroa Street

21 Suite 2400 Los Angeles, California 90017-2566

22

23

24

25

26

27

28 8158

1 INDEX

2

3 Note: Mr. Sneddon is listed as "SN" on index.

4 Mr. Zonen is listed as "Z" on index. Mr. Auchincloss is listed as "A" on index.

5 Mr. Mesereau is listed as "M" on index. Ms. Yu is listed as "Y" on index.

6 Mr. Sanger is listed as "SA" on index.

7

8

9 PLAINTIFF'S WITNESSES DIRECT CROSS REDIRECT RECROSS

10

11 SMITH, Rosibel Ferrufino 8162-Z

12 (Nonjury)

13 BONNER, Craig 8184-Z 8185-SA (Re-called)

14 KOONS, Harry 8190-Z

15

16

17

18

19

20

21

22

23

24

25

26

27

28 8159

1 EXHIBITS

2 FOR IN PLAINTIFF'S NO. DESCRIPTION I.D. EVID.

3

4 841 Book entitled "Boys Will Be Boys" 8163

5 842 Book entitled "The Boy;

6 A Photographic Essay" 8163

7 856 Photograph 8164 8166

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28 8160

1 Santa Maria, California

2 Friday, April 29, 2005

3 8:30 a.m.

4

5 (The following proceedings were held in

6 open court outside the presence and hearing of the

7 jury:)

8

9 THE COURT: Good morning.

10 COUNSEL AT COUNSEL TABLE: (In unison)

11 Good morning, Your Honor.

12 THE COURT: Let's see. I understand that the

13 District Attorney has requested the out-of-presence

14 hearing on the foundation on the books.

15 MR. ZONEN: Yes, Your Honor.

16 THE COURT: What exhibit number is that?

17 MR. ZONEN: No. 841 and 842.

18 THE COURT: All right. I did review those

19 materials, as I had requested. I did get the

20 materials, and I looked at those books and indicated

21 that there must be further foundation.

22 Are you prepared to go forward with that?

23 MR. ZONEN: I am, Your Honor. Foundation

24 with regards to where seized, do you mean?

25 THE COURT: Yes. Connecting --

26 MR. ZONEN: Yes, we're prepared to do that

27 at this time.

28 We'll call Detective Rosibel Smith to the 8161

1 stand.

2 THE COURT: When you get to the witness

3 stand, remain standing and face the clerk.

4

5 ROSIBEL FERRUFINO SMITH

6 Having been sworn, testified as follows:

7

8 THE WITNESS: I do.

9 THE CLERK: Please be seated. State and

10 spell your name for the record.

11 THE WITNESS: Rosibel, R-o-s-i-b-e-l;

12 Ferrufino, F-e-r-r-u-f-i-n-o; Smith, S-m-i-t-h.

13 THE CLERK: Thank you.

14

15 DIRECT EXAMINATION

16 BY MR. ZONEN:

17 Q. Tell us your current occupation.

18 A. I'm a police detective for the Los Angeles

19 Police Department currently assigned to the Threat

20 Management Unit of the Detective Support Division.

21 Q. How long have you been a police officer for

22 the City of Los Angeles?

23 A. For a little over 20 years.

24 Q. And your current assignment involves what?

25 A. Aggravated stalking cases, criminal threats

26 of elected officials, and workplace violence

27 incidents within the City of Los Angeles.

28 Q. Did you work also as a sex crimes 8162

1 prosecutor -- sex crimes detective?

2 A. Yes, I did.

3 Q. For what period of time?

4 A. For nine years.

5 Q. All right. Which period of nine years was
6 that?

7 A. From 1988 to 1997.

8 Q. Did you have occasion to conduct and execute
9 search warrants during that time?

10 A. Yes, I did.

11 Q. In August of 1993, did you participate in
12 the execution of a search warrant at Neverland Ranch
13 in Los Olivos, the County of Santa Barbara?

14 A. Yes, I did.

15 Q. And did you seize objects from that
16 residence during that search?

17 A. Yes.

18 MR. ZONEN: May I approach the witness?

19 THE COURT: Yes.

20 Q. BY MR. ZONEN: I'm going to show you three
21 objects at this time. Exhibits No. 841 and 842;
22 would you take a look at those two objects, please?

23 A. Okay.

24 Q. Do you recognize those two books?

25 A. Yes, I do.

26 Q. Did you seize those two books?

27 A. Yes, I did.

28 Q. From where? 8163

1 A. These books were seized from a cabinet
2 within Michael Jackson's closet in the master
3 bedroom.

4 Q. All right. Describe his bedroom for us,
5 please.

6 A. The bedroom is a very large --

7 MR. SANGER: Your Honor, I think it would be
8 cumulative at this time, wouldn't it?

9 THE COURT: Sustained.

10 Q. BY MR. ZONEN: All right. Tell us where in
11 his bedroom this particular closet is.

12 A. It was off to the side of the main bedroom.

13 There were -- actually, there were two closets on
14 either side of the room, and this would have been
15 the side where the Jacuzzi was located.

16 Q. Now, this is the first floor of his bedroom
17 suite; is that right?

18 A. That's correct.

19 Q. Was there a bed in that bedroom suite?

20 A. Yes.

21 Q. I'm going to show you Exhibit No. 856.

22 A. Okay.

23 Q. Do you recognize that photograph?

24 A. Yes, I do.

25 Q. And that photograph is what?

26 A. This is a photograph that was taken during
27 the search warrant of Neverland Ranch, and it
28 depicts the file cabinet that the books were seized 8164

1 from.

2 Q. All right. And is that file cabinet

3 depicted in that photograph?

4 A. Yes, it is.

5 Q. How many drawers in that file cabinet?

6 A. Four.

7 Q. In which drawer were those two books seized,

8 from which drawer?

9 A. From the third drawer.

10 Q. Was that file cabinet locked?

11 A. Yes, it was.

12 Q. How were you able to unlock it?

13 A. We were able to get the key from -- the maid

14 brought the key over to the home and we were able to

15 unlock it at that time.

16 Q. Do you remember which maid that was?

17 A. I believe it was Blanca Francia.

18 Q. Thank you. Is that photograph -- does that

19 photograph accurately depict the subject matter

20 contained within it?

21 A. Yes, it does.

22 MR. ZONEN: Move to introduce 856 into

23 evidence.

24 MR. SANGER: For the purposes of?

25 MR. ZONEN: For the purposes of this

26 hearing.

27 MR. SANGER: For this hearing, I have no

28 objection. 8165

1 THE COURT: Then it's admitted for the
2 purposes of the hearing.
3 MR. ZONEN: And I have no further questions
4 as to foundation for this witness.
5 THE COURT: Cross-examine?
6 MR. SANGER: May I approach the witness to
7 take a look at the exhibits, please?
8 THE COURT: Yes.
9 MR. SANGER: And I have no questions for the
10 purpose of this hearing.
11 THE COURT: All right.
12 MR. ZONEN: I would move to introduce into
13 evidence 841, 842 as well.
14 MR. SANGER: Well, and I suppose that's the
15 purpose of the hearing, Your Honor. We had
16 previously objected, and -- excuse me one second.
17 We still object on the grounds that this is
18 remote in time. We have books from -- seized in
19 1993 with regard to events that allegedly occurred
20 in 2003, so the probative value of these books is
21 minimal at best, and it's outweighed by the
22 confusion to the jury, prejudicial effect, and
23 everything else. There's got to be some connection
24 in time. It's just plain stale to bring in
25 something from that far back and try to use it by
26 way of not much more than innuendo at this time.
27 These books were not shown to anybody. There's no
28 evidence they were shown to anybody. No evidence 8166

1 they were shown to minors. They were locked in a
2 cabinet.

3 THE COURT: What about the Memro case,
4 People vs. Memro, cited by the prosecution? The
5 only relevance I see would be to the 1108 evidence
6 that was introduced as these books could be viewed
7 as supportive of the other 1108 evidence. That's
8 what I think their purpose of introducing the books
9 is.

10 MR. SANGER: Well, I think that is. I mean,
11 I can't imagine what else it would be. That's what
12 I'm saying. In other words, there's no evidence
13 that these books, or any of the other books, the
14 actual books that were seized, many of which, or all
15 of which the Court has allowed from the 2003 time
16 period, there's no evidence that they were shown to
17 any of the people in this case. Not shown to
18 minors. They weren't used for any purpose. They're
19 just shown -- they're -- I'm sorry. They were
20 offered to show that Mr. Jackson had these materials
21 in his house. I think the Court's now heard all the
22 testimony. I think it's very minimal weight even
23 for the 2003 materials.

24 And so my concern is that while Memro might
25 talk about allowing this kind of evidence to show
26 that the -- that the individual had this evidence in
27 his possession at the time of the offense, this
28 isn't the time of the offense. This is ten years 8167

1 before. And it's locked in a file cabinet. So not
2 only do you not have it being used for any untoward
3 purpose, but it's simply possessed and it's
4 possessed in a secure fashion, and it's possessed
5 ten years before any events in this case.
6 It just seems to me that at some point the
7 Court has to draw the line. And the Court has, of
8 course, been drawing lines throughout this trial as
9 to what has the kind of probative value that should
10 come before the jury and what doesn't.
11 And I think that, given the fact that the
12 only materials that there's any evidence were shown
13 or seen by minors in this case are adult
14 heterosexual magazines that are lawful to possess by
15 adults, the fact that they have attempted to
16 introduce from a giant library of books any book
17 that might have a page or two or five or ten of
18 individuals who are not fully clothed is -- I think
19 it's just an effort to prejudice the jury. So --
20 THE COURT: But the Memro case isn't about
21 showing the material to anybody. It's about having
22 the material and allowing it to be introduced as
23 evidence that the defendant may have some proclivity
24 to the type of sexually explicit material that we're
25 dealing with.
26 So it's not a question -- you know, one of
27 the issues in this case presently is about whether
28 he showed children that material. But another 8168

1 reason the material's admissible is that it relates
2 to his state of mind. And that's why they're
3 offering it, according to their proffer.
4 MR. SANGER: Right. I understand that. And
5 maybe I'm not being clear. But what I'm saying is,
6 yes, there is no showing that it applies to the
7 other purpose. So therefore, it's evidence to show
8 that it's being offered to show that the person who
9 possessed it has an interest in these materials.
10 And if that's all it is, then my position is that
11 because it's ten years old, the probative value is
12 very, very weak.
13 THE COURT: If it's offered to show that he
14 had that interest at the time of the 1108
15 allegations, that's the probative value.
16 MR. SANGER: And --
17 THE COURT: And you say that's --
18 MR. SANGER: And I'm saying that's very,
19 very weak.
20 THE COURT: I just want to be sure we're
21 seeing it the same way, and I think we are. Okay.
22 MR. SANGER: Yes. And I apologize for not
23 being more direct in answering the Court's
24 questions.
25 But I guess what I'm saying, at some point
26 you have to draw the line there. In other words,
27 this case really isn't about 1993. 1108 only allows
28 that to come in for really a limited purpose. 8169

1 THE COURT: True.

2 MR. SANGER: And now we are embellishing the
3 limited purpose that's already pretty remote. And
4 as the Court acknowledged from the beginning, the
5 real question is whether or not this kind of
6 material is going to be so prejudicial when the jury
7 is considering the strength of the case that was
8 presented as to the charged events. And the
9 strength of the case presented as to the charged
10 events is, I submit, much weaker than it was led
11 to -- the Court was led to believe at the time of
12 the 1108 ruling.

13 In other words, Your Honor had heard some of
14 the evidence, but you hadn't heard all of the
15 evidence. You've heard more evidence and it's
16 gotten worse for the prosecution. Their current
17 case is very weak. This is just an attempt to
18 further bolster that with what is remote. And I
19 understand the Court's theory, and -- the
20 prosecution's theory, let's put it that way, and the
21 Court's acknowledgement of that theory. And that's
22 my point; it is remote. It's to bolster 1108. And
23 1108 is to bolster this case. It's too far afield.

24 THE COURT: Okay. I understand your argument
25 now.

26 MR. SANGER: Yes. Thank you, Your Honor.

27 THE COURT: Do you wish to respond, Mr.

28 Zonen? 8170

1 MR. ZONEN: If the Court would like, yes.
2 Just briefly, Your Honor, the books that
3 were seized in 1993 were seized at a time that was
4 contemporaneous with the evidence presented pursuant
5 to 1108. There were four young boys who were
6 involved in Michael Jackson's life. It's
7 interesting and unique that the maid who was called
8 to open up this file cabinet was, in fact, the
9 mother of one of those victims at that time.
10 Those books -- one of the books -- both of
11 the books are pictorial essays of adolescent boys.
12 One of them, about 10 percent of the photographs are
13 completely nude boys. And the other one, 90 percent
14 of the photographs are completely nude boys. The
15 possession of those books by Mr. Jackson, we
16 believe, is evidence of a prurient interest in
17 adolescent boys and it's exactly contemporaneous
18 with the state of the evidence as to all of the 1108
19 witnesses. Therefore, we believe it adequately
20 corroborates within the meaning of People vs. Memro.
21 We'd ask that it be admitted.
22 THE COURT: All right. I want to think about
23 this issue a little further. I'm not ready to make
24 a decision on that.
25 MR. SANGER: Your Honor, could I -- I know
26 we go back and forth, and I can't really tell who
27 started and if I get a brief rebuttal. But could I
28 be permitted to make one remark? 8171

1 THE COURT: Yes.
2 MR. SANGER: Thank you.
3 When the Court looks at the evidence, I'd
4 ask the Court to look at the inscription in the
5 inside of the first book, which is "Boys Will Be
6 Boys." And I don't know --
7 THE COURT: Do you want to get the book for
8 me and I'll look at it?
9 MR. SANGER: Yes. I take it I may approach.
10 THE COURT: You may, yes. You may retrieve
11 the exhibits. Bring both of them. You might as
12 well bring both of them.
13 Officer, I think I let you sit there a
14 little longer because I wasn't sure that someone
15 might want to ask you another question. But I don't
16 think that's necessary, so you may step down.
17 THE WITNESS: Thank you, sir.
18 MR. ZONEN: Your Honor, if we're going to --
19 if the debate is going to go beyond the location of
20 where the books are seized --
21 THE COURT: Cross-examination is over. The
22 argument's not there in that area.
23 Am I missing something?
24 MR. ZONEN: No. My understanding was the
25 debate was over the location of the books.
26 THE COURT: No, no. The debate -- I said I
27 wanted further foundation. I wanted to look at the
28 books, and I wanted foundation. There was no 8172

1 debate. That was my request.
2 MR. ZONEN: That's fine.
3 THE COURT: Now I have what I want. I still
4 have to make a decision.
5 MR. ZONEN: That's fine. That's fine.
6 THE COURT: Now, what was your reference?
7 MR. SANGER: I don't know which number is
8 which, but the one that's entitled "Boys Will Be
9 Boys."
10 THE COURT: Yes.
11 MR. SANGER: Which I think is 841, but I'm
12 not positive.
13 THE COURT: It's 841.
14 MR. SANGER: Okay. On 841, if you look at
15 that, it appears to be Mr. Jackson's own
16 inscription, and he says, "Look at the true spirit
17 of happiness and joy in these boys' faces. This is
18 the spirit of boyhood, a life I never had and will
19 always dream of. This is the life I want for my
20 children. M.J."
21 The other book, which would be 842, appears
22 to be inscribed by a female fan, and it appears to
23 have been sent to Mr. Jackson by a fan of some sort.
24 That's the interpretation I take from that
25 inscription.
26 THE COURT: Well, there is an inscription,
27 "To Michael. From your fan."
28 MR. SANGER: Yes. 8173

1 THE COURT: "Love" -- "XXXOOO" - I was going
2 to interpret that, but I won't - "Rhonda."
3 I know what I mean when I put "XXXOOO."
4 MR. SANGER: And I have noted Your Honor has
5 never put that on any of your rulings in this case.
6 (Laughter.)
7 THE COURT: I can't top that.
8 All right. Then that hearing -- at this
9 point, I'm going to take that under submission, and
10 we'll rule on that before the People rest.
11 And if you're about to rest and I haven't
12 ruled it, tell me. Remind me.
13 MR. ZONEN: Did you mean rest the case or
14 rest today?
15 THE COURT: Rest the case.
16 MR. ZONEN: All right. The witnesses are
17 here today. Are they not going to be testifying
18 today? If they are not, I will go ahead and excuse
19 them.
20 THE COURT: They can't hear you.
21 MR. ZONEN: I'm sorry.
22 THE COURT: What witnesses?
23 MR. ZONEN: The witness who seized the book
24 presumably would be testifying as to where and what
25 she seized in the course of the trial before the
26 jury.
27 THE COURT: Oh, I see. You need it for that
28 purpose? 8174

1 MR. ZONEN: Yeah. If we're not going to do
2 that today, I'll go ahead and excuse her and have
3 her come back.
4 THE COURT: No, we can do that today.
5 MR. ZONEN: We could put her to the end of
6 the witness list.
7 THE COURT: We could put her to the end of
8 the morning.
9 MR. ZONEN: Your Honor, there was one other
10 matter, a motion that was filed by an attorney who
11 represents one of the witnesses to be called today.
12 Did the Court want to address that at this time?
13 THE COURT: Yes. That's the Drew witness?
14 MR. ZONEN: Yes, Your Honor.
15 THE COURT: Is that witness present?
16 MR. ZONEN: The witness is present, out of
17 the courtroom, and counsel is present before you.
18 MS. SAGER: Good morning, Your Honor. Kelli
19 Sager on behalf of Ian Drew, a nonparty reporter.
20 THE COURT: Good morning.
21 MS. SAGER: We had filed a short memorandum
22 with the Court concerning Mr. Drew's testimony
23 largely to give the Court some guidance and
24 background, which I understand has already come up
25 once in this case, as to the scope of the reporter's
26 privilege under the California Constitution and the
27 First Amendment and the common law.
28 Mr. Drew is being called by the prosecution, 8175

1 as I understand it from Mr. Zonen, to repeat
2 information that has been published by him in a
3 television broadcast. And I assume that Mr. Zonen
4 still intends to limit his questioning to the
5 published material. It nonetheless raises an issue
6 as to cross-examination. And in the Foss case,
7 which we cited in our papers, if it appears that the
8 defendant's cross-examination would intrude into
9 privileged areas, then it's advised that the Court
10 address that at the outset, because it may be that
11 if the defendant is not going to be permitted to
12 cross-examine into those areas, that the original
13 testimony should not be permitted either.
14 In either case, I just wanted to make sure
15 the Court was apprised that the witness does intend
16 to assert his rights as to unpublished information
17 or confidential source information and to ask the
18 Court's permission to be making objections on his
19 behalf.
20 THE COURT: Well, you have my permission to
21 do that.
22 MS. SAGER: Thank you.
23 THE COURT: You know, I thought your points
24 and authorities were well done and complete.
25 One of the things that you mentioned in your
26 points and authorities was that there's a preference
27 to have a hearing outside the presence of the jury
28 before the testimony is proffered to the jury so the 8176

1 Court can determine whether or not the evidence
2 should be allowed.
3 MS. SAGER: That's correct, Your Honor.
4 THE COURT: Based on the right of the defense
5 to cross-examine.
6 Mr. Mesereau, you wish to say --
7 MR. MESEREAU: Yes, please, Your Honor.
8 Your Honor, as the Court knows, the
9 witness's name came up during the testimony of --
10 THE COURT: Just a moment.
11 Would someone create a seat there so she
12 doesn't have to stand.
13 MS. SAGER: Thank you. Thank you, Your
14 Honor.
15 MR. MESEREAU: This witness's name came up
16 during the testimony yesterday of Debbie Rowe.
17 THE COURT: Right.
18 MR. MESEREAU: And she did testify, among
19 other things, that he had actually interviewed her
20 at Schaffel's house during the subject interview
21 that was talked about yesterday.
22 This witness was secretly recorded on a
23 number of occasions by Debbie Rowe at the behest of
24 the sheriffs and he also gave a police interview
25 where he talked extensively about various aspects of
26 the case, including Mr. Schaffel and others.
27 Clearly, he had a career motive in doing this.
28 Clearly, there were financial considerations 8177

1 involved, considerations involving advancing his
2 career, and clearly he wanted to be involved in this
3 case. If you look at the secretly recorded
4 conversations, you can gather a lot of his motives
5 to do what he's doing.
6 And to permit him to testify as a
7 prosecution witness and not allow the defense to go
8 into those types of incentives to do various things,
9 say various things, appear in various places, would
10 be highly prejudicial to the defense. So allowing
11 him to just hide behind a journalistic privilege
12 every time his motives and veracity are impeached or
13 contradicted or questioned would be prejudicial to
14 us.

15 He put himself right in the middle of this
16 investigation intentionally, willingly, and
17 knowingly. Met with Mr. Klapakis for an interview,
18 talked about his knowledge of various individuals
19 and various occurrences in the case as he understood
20 them. Was recorded on a number of occasions by the
21 sheriffs because they thought he had information of
22 significance, conducted the interview. How can they
23 possibly, if he gets caught in a problem, say
24 journalistic privilege? I think that would be
25 highly inappropriate and very prejudicial to the
26 defense.

27 Thank you, Your Honor.

28 MS. SAGER: Your Honor, if I could just 8178

1 briefly respond to Mr. Mesereau's comments.
2 Under Penal Code Section 632, I believe any
3 recordings of Mr. Drew that were done without his
4 knowledge would not be admissible for any purpose.
5 As a reporter, he's engaged in conversations with a
6 great number of people, including Miss Rowe, as she
7 testified to, in the course and scope of his duties
8 as a reporter. The fact that those conversations
9 may have been secretly recorded without his
10 permission, without his knowledge, cannot waive any
11 privilege that he has as a journalist as to
12 information he's attempting to gather.
13 He's reported on Mr. Jackson. He did an
14 interview with Miss Rowe, which everyone has a tape
15 of. And as I understand it, the issue about that
16 interview has already been discussed, there have
17 been other witnesses who have testified, and the
18 tape of the entire interview is available. So
19 there's nothing Mr. Drew can add to that equation.
20 As to his -- what Mr. Mesereau described as
21 an interview with detectives, when detectives showed
22 up, as I understand it, at Mr. Drew's office to
23 subpoena him, he was asked about statements that he
24 had made on television, and again referred to those
25 statements that he had already made on television,
26 the published statements.
27 He didn't have an attorney. He didn't have
28 anyone advising him of his rights at that point, and 8179

1 again, I don't think that could be viewed as a
2 knowing waiver of his rights. Nor is that a
3 publication within the meaning of Article I,
4 Section 2(b) of the California Constitution. He was
5 not disseminating information to the public in any
6 conversation he had with the detective who was
7 serving him with a subpoena.

8 As I understand it, there's one statement
9 that the prosecution intends to ask Mr. Drew about,
10 and that was in this particular television broadcast
11 concerning a conversation that he had with one of
12 Mr. Jackson's -- I don't know how you would describe
13 him, someone that Mr. Jackson knew. That person is
14 certainly a witness who could testify as to that.
15 As I understand, it's about whether the
16 family at issue left the ranch at some point in the
17 middle of the night. I don't believe that's
18 disputed. So it's difficult for me to see what Mr.
19 Drew can add to these proceedings in any case, and
20 certainly nothing that would justify invading his
21 privilege by opening him up to questions about
22 conversations he had during the course and scope of
23 his news-gathering activities.

24 THE COURT: Mr. Zonen?

25 MR. ZONEN: Your Honor, we intend to limit
26 our inquiry to information that was disclosed by Mr.
27 Drew on national television. It's published
28 information, therefore it's not protected by the 8180

1 shield law.

2 THE COURT: Well, but that's not the issue,

3 is it? I mean, that --

4 MR. ZONEN: That's one issue. The next

5 issue is the question of whether or not

6 cross-examination --

7 THE COURT: Right.

8 MR. ZONEN: -- is important for impeachment.

9 We believe that the information that we are

10 going to be asking him is about a statement made by

11 another person, one of the unindicted

12 co-conspirators, to the effect that the Arvizo

13 family had fled from Neverland, and therefore Mr.

14 Drew would not be able to conduct an interview that

15 he expected to do.

16 I don't know that the content of that

17 information requires an extensive cross-examination

18 into collateral areas. I think it can be adequately

19 cross-examined as to that statement alone without

20 going too far beyond the published information.

21 THE COURT: Well, I think what we'll do is

22 you can call your witness, you can ask him the

23 questions, and then I'll understand what you're

24 going to ask him in front of the jury and what his

25 answers are going to be --

26 MR. ZONEN: Okay.

27 THE COURT: -- and then we'll see what --

28 MR. ZONEN: Shall we do that at this time? 8181

1 THE COURT: -- what Mr. Mesereau wants to do.
2 Yesterday he filed a motion to prevent
3 someone from testifying and later withdrew it,
4 so....
5 MR. ZONEN: He might wish to do that today.
6 THE COURT: I don't know.
7 Call your witness.
8 MR. ZONEN: Did you wish to do that outside
9 the presence of the jury at this time?
10 THE COURT: Absolutely. That's the point.
11 MR. ZONEN: Yes. We're prepared to do that.
12 Would you call Mr. Drew down, please.
13 MS. SAGER: As I believe the District
14 Attorney knows, Mr. Drew is not in the courthouse.
15 He was told to be here at ten o'clock.
16 THE COURT: Oh, okay.
17 MS. SAGER: I was asked by Mr. Zonen's
18 office last night to show up early in case the Court
19 wanted to hear argument on that.
20 THE COURT: That's not a problem. We can do
21 the hearing later.
22 MS. SAGER: Okay. I will go outside,
23 though, and call him, Your Honor, and tell him to
24 come directly to the courthouse, and he'll be
25 available whenever the Court can then hear him.
26 THE COURT: If he's going to be here at
27 10:00, that's fine.
28 MR. ZONEN: I don't know that our other 8182

1 witness will necessarily go to ten o'clock. If
2 we're not going to be dealing with --
3 THE COURT: I thought you were going to try
4 to get other witnesses for me.
5 MR. ZONEN: We are not able to do that. The
6 witnesses we had I think were the ones that we
7 identified yesterday.
8 THE COURT: But I was told you would attempt
9 to get other witnesses to fill the day. Because I
10 didn't give you permission for a short day today, or
11 no day.
12 MR. ZONEN: I apologize to the Court. We
13 are not able to do that.
14 THE COURT: Go ahead and call your client,
15 please.
16 MS. SAGER: I'll do that. Thank you, Your
17 Honor.
18 MR. ZONEN: We have a witness who's ready to
19 proceed at this time.
20 THE COURT: All right. You can bring in the
21 jury.
22
23 (The following proceedings were held in
24 open court in the presence and hearing of the
25 jury:)
26
27 THE COURT: Good morning again.
28 THE JURY: (In unison) Good morning. 8183

1 THE COURT: It's getting to be a habit,
2 isn't it?
3 Counsel, call your next witness.
4 MR. ZONEN: We'll call Detective Craig
5 Bonner to the stand.
6 THE COURT: I believe you were already sworn.
7 You may be seated.
8
9 CRAIG BONNER
10 Having been previously sworn, resumed the
11 stand and testified further as follows:
12
13 DIRECT EXAMINATION
14 BY MR. ZONEN:
15 Q. Detective, good morning.
16 A. Good morning.
17 Q. You've already testified previously, I
18 believe, on a couple of occasions already.
19 Detective, you've already testified
20 previously on a couple occasions. There's an
21 exhibit that's in front of you. Could you take that
22 exhibit, please? And is that Exhibit 827?
23 A. Yes, it is.
24 Q. And does that correspond to the Sheriff's
25 No. 817?
26 A. Yes, it does.
27 Q. Do you recognize that exhibit?
28 A. Yes, I do. 8184

1 Q. What is that exhibit?

2 A. It is an audio cassette tape which contains
3 a recording of Janet Arvizo and Frank Tyson, or
4 Cascio.

5 Q. This is a telephone conversation; is that
6 correct?

7 A. It appears to be, yes.

8 Q. Was that tape-recording delivered to a lab
9 in Los Angeles County?

10 A. Yes, it was.

11 Q. And what lab was that?

12 A. The Aerospace Corporation and/or the
13 National Law Enforcement and Corrections Technology
14 Center.

15 Q. The purpose for delivering that tape to that
16 lab was what?

17 A. To have them analyze it, and to determine if
18 there were any breaks or stops that occurred within
19 that recording.

20 Q. Who was it who delivered that tape to the
21 lab?

22 A. I did.

23 MR. ZONEN: Thank you. No further
24 questions.

25

26 CROSS-EXAMINATION

27 BY MR. SANGER:

28 Q. Good morning. 8185

1 A. Good morning.
2 Q. The National Law Enforcement Technology
3 and -- whatever it was --
4 A. Corrections and Technology.
5 Q. Corrections and Technology. This is
6 actually a private company, is that right?
7 A. It is.
8 Q. And they market their services to law
9 enforcement; is that correct?
10 A. I believe they have a grant through the
11 government that they get paid to assist law
12 enforcement.
13 Q. Okay. It's a private company, but they
14 market their services to law enforcement?
15 MR. ZONEN: Objection; asked and answered.
16 MR. SANGER: Asked, but not answered.
17 THE COURT: Overruled.
18 MR. SANGER: Thank you.
19 THE WITNESS: I don't believe they market
20 their services, no.
21 Q. BY MR. SANGER: They let you know that they
22 exist and they're available to do work; is that
23 correct?
24 A. That's correct, yes.
25 Q. They get paid by doing the work?
26 A. Not by us, no.
27 Q. They get paid by this grant?
28 A. I believe so, correct. 8186

1 Q. That's your understanding? All right.
2 Now, did you seize this particular item that
3 you took down?
4 A. No, I did not.
5 Q. So you took it out of the evidence locker?
6 A. Correct.
7 Q. At the sheriff's department?
8 A. Correct.
9 Q. And you delivered it down to the -- to the
10 lab; is that right?
11 A. Yes.
12 Q. And then you stayed for a while while some
13 work was done; is that correct?
14 A. That is correct.
15 Q. Not all the work was done while you were
16 there?
17 A. No.
18 Q. You left it?
19 A. Left the item?
20 Q. Yes.
21 A. No.
22 Q. What did you do?
23 A. I remained with this item until they had
24 brought it into their system, and then I retained
25 this item and brought it back to the sheriff's
26 department.
27 Q. All right. So they made a copy to do the
28 rest of their work? 8187

1 A. They brought it in digitally. I'm not real
2 savvy on it, but basically they played it into their
3 system, which brought it into a computer, and then
4 they utilized that material that was saved onto the
5 computer.

6 Q. Okay. In other words, that is an audiotape.

7 That's a regular cassette, little reel-to-reel
8 cassette?

9 A. Correct.

10 Q. Magnetic tape, correct?

11 A. Correct.

12 Q. And while you were there, they did some
13 analysis of the actual tape?

14 A. Correct.

15 Q. And then while you were there, they copied
16 it into digital format of some sort?

17 A. Correct.

18 Q. And then you took the actual tape and you
19 brought it back?

20 A. Yes.

21 Q. All right. Now, what is your understanding
22 as to the source of the original tape?

23 A. This tape came from the office of Brad
24 Miller.

25 Q. Okay. In other words, as one of the
26 detectives working on the case, you are familiar
27 with the source of various items of evidence; is
28 that right? 8188

1 A. Yes.

2 Q. And that was something that was seized
3 during the search warrant execution at Brad Miller's
4 office, correct?

5 A. That is correct.

6 Q. In other words, it was not offered to law
7 enforcement as a piece of evidence that was helpful
8 to Mr. Miller or helpful to Mr. Jackson, or helpful
9 to anybody; is that correct?

10 MR. ZONEN: I'm going to object as beyond
11 the scope of the direct examination and beyond the
12 scope of his personal knowledge. And relevance.

13 THE COURT: Sustained.

14 Q. BY MR. SANGER: Okay. It was something that
15 was -- that was simply seized during a surprise
16 search, right?

17 MR. ZONEN: Objection. Irrelevant; beyond
18 the scope of his knowledge.

19 MR. SANGER: Well, that's the question.

20 THE COURT: Sustained. Argumentative.

21 MR. SANGER: All right. It's still my last
22 question. No further questions.

23 MR. ZONEN: No further questions.

24 I will call Dr. Harry Koons to the stand.

25 THE COURT: You may step down.

26 Remain standing, raise your right hand, and
27 face the clerk here.

28 // 8189

1 HARRY KOONS

2 Having been sworn, testified as follows:

3

4 THE WITNESS: I do.

5 THE CLERK: Please be seated. State and

6 spell your name for the record.

7 THE WITNESS: My name is Harry Koons,

8 K-o-o-n-s.

9 THE CLERK: Thank you.

10 MR. ZONEN: May I proceed?

11 THE COURT: Yes.

12

13 DIRECT EXAMINATION

14 BY MR. ZONEN:

15 Q. Dr. Koons, good morning.

16 A. Good morning.

17 Q. What is your current occupation?

18 A. I'm a scientist.

19 Q. You're a scientist in what capacity?

20 A. I'm a scientist at The Aerospace Corporation

21 in El Segundo, California. It's the Space Science

22 Applications Laboratory. And our company is a --

23 well, it hosts an FFRDC, which is a federally funded

24 research and development center, which primarily

25 assists the Air Force and national security agencies

26 in their space programs.

27 Q. All right. Do you also have a second

28 company titled "The National Law Enforcement and 8190

1 Corrections Technology Center”?

2 A. Yes. That’s also hosted by The Aerospace

3 Corporation and it’s funded by the National

4 Institute of Justice.

5 Q. Let’s start with the first one, The

6 Aerospace Corporation. What is your position there

7 with The Aerospace Corporation?

8 A. I’m a distinguished scientist.

9 Q. What kind of work do you do with the

10 Aerospace Corporation?

11 A. On the Air Force side, I have flown

12 instruments on spacecraft to make measurements in

13 the magnetosphere of what we call plasma waves, and

14 I’m also an expert on the space hazards to

15 spacecraft.

16 Q. All right. I think the other microphone is

17 on as well.

18 A. Shall I just talk in the middle?

19 Q. You need to be close to one or the other,

20 but whichever is more comfortable.

21 A. Either one is okay.

22 Q. All right. What is your education, your

23 qualifications, please?

24 A. I have a bachelor’s of science in physics

25 from the Massachusetts Institute of Technology, and

26 a Ph.D. in geophysics also from the Massachusetts

27 Institute of Technology.

28 Q. How long have you worked with The Aerospace 8191

1 Corporation?

2 A. I joined them right out of graduate school
3 in 1968.

4 Q. Give us a sense of what type of work you do
5 for Aerospace Corporation. How do you spend your
6 day?

7 A. I have a million hats. I spend most of my
8 time either -- working on scientific papers. I
9 spend 20 percent of my time on the forensics audio.
10 I spend about 40 percent of my time working with the
11 program offices on trying to help them with their
12 problems on their space programs. There's almost no
13 way I spend a given day.

14 Q. Now let's turn to the National Law
15 Enforcement and Corrections Technology Center. Tell
16 us what that is and how that happens to be
17 associated with The Aerospace Corporation.

18 A. It began in 1995. There was a -- an
19 initiative by the National Institute of Justice to
20 find a way of helping local law enforcement agencies
21 in their work. They recognized that a lot of
22 agencies didn't have a lot of funding for detailed
23 forensics work, and so they issued a proposal for
24 organizations with more capabilities to help them.
25 And so Aerospace responded with a proposal, and out
26 of that was formed the National Law Enforcement and
27 Corrections Technology Center at Aerospace.

28 Q. And what kind of work do you do with the 8192

1 National Law Enforcement and Corrections Technology
2 Center?

3 A. I personally am responsible for the audio
4 forensics work.

5 Q. Is there other forms -- are there other
6 forms of forensic work that are done by that center
7 as well?

8 A. Yes. Video forensics and also crime scene
9 analysis. We have a large capability in our support
10 for the Air Force, electron microscopes and very
11 sensitive equipment that can be used to analyze
12 materials. And so it's essentially a matrix
13 organization that if the Law Enforcement Center
14 needs something in the laboratories, they go to the
15 person in the laboratories. The video and the audio
16 efforts have been more or less continuous since its
17 inception.

18 Q. All right. What is it that you do with
19 regard to audiotapes?

20 A. Primarily what we do is we enhance the audio
21 to allow for a transcription. Most people would
22 call this clarifying the audio.

23 We also, from time to time, are asked to
24 look at the tapes for special reasons. Some of
25 them, for example, are to identify the number of
26 gunshot wounds -- or not "wounds." Gunshots that
27 were fired at a scene that was recorded. At other
28 times to try to identify the number of people that 8193

1 were present during the recording. We've been asked
2 to try to determine where a recording was made based
3 upon background sounds that were heard on the tape.

4 Q. All right. Are you able to make
5 determinations as to whether a tape is a
6 first-generation or second-generation tape? Is that
7 something that can be done?

8 A. We can -- we can do that, in some cases, by
9 looking at the content of the -- of the tape, yes.

10 Q. Are you able to determine whether there are
11 breaks in a tape?

12 A. Yes. Normally we can determine if there are
13 breaks in the audio in the tape.

14 Q. Are you able to determine, on occasion,
15 whether a tape is a compilation of prior other
16 multiple tapes?

17 A. Normally we can do that, yes.

18 Q. How do you do those things?

19 A. Each one is done in a different way. Let's
20 start at the back and work forward.

21 If you have a compilation of a multiple of
22 tapes, you'll have different background audio on the
23 different segments. And, for instance, if one
24 segment, at the extreme, if it was made in a
25 restaurant, and another section was made out on a
26 street with passing cars, and another section was
27 made in a home with a television on, that you can
28 look at the backgrounds of each of these tapes and 8194

1 identify the background in the ways that you see,
2 and you can see where these different sections are
3 on the tape.
4 You ask -- what was the second one?
5 Q. The second one was breaks in a tape.
6 A. Breaks. Okay. For breaks in a tape, you
7 again look at the background, and when you have a --
8 a discontinuity, or a break in the tape, you'll
9 normally have -- the tape will start and stop, start
10 up again, stop, start up again, and you can see
11 signatures of this on the waveforms on the tape.
12 You will also find lines in the background.
13 By "line," I mean a constant frequency. For
14 instance, one line which appears on many tapes is a
15 power line at 60 hertz, and if that power line is
16 discontinuous you could say that the tape was
17 started and stopped when the power line disappears
18 and reappears.
19 Q. I think the first question that was asked to
20 you was multiple generations of tapes.
21 A. Yeah, multiple generation is more difficult.
22 Normally, with the capabilities we have, when a tape
23 is started and played, and stopped and started
24 again, that -- there's an erase head on the
25 tape-recorder, and the erase head erases the
26 material that was on the tape prior to that.
27 Now, some laboratories have the capability
28 of going in and examining the material of the tape 8195

1 itself, and they may be able to identify if the tape
2 was started and stopped. We can only look at the
3 content of the tape. And normally what we would do
4 when we're asked a question like that is we would
5 look at the beginning of the tape and we would look
6 at the end of the tape and see if there's material
7 which is not contiguous with the material in the
8 middle of the tape, and also look at the end of the
9 tape to see whether, if the present material that
10 was recorded, let's say, is recorded on only one
11 half of the tape. And then if the tape was
12 previously used there would still be material on the
13 second half of the tape, unless somebody recorded --
14 erased it all the way to the end.

15 Q. Doctor, when did you begin doing forensic
16 analysis of audiotapes?

17 A. 1995.

18 Q. How many do you think you have done since
19 that time?

20 A. About 200 cases, give or take 10 or 20.

21 Q. Have you ever had occasion to testify in
22 court as to your analysis of those tapes?

23 A. No, I haven't. I've been subpoenaed twice
24 before and I have not testified in court.

25 Q. This is your first occasion?

26 A. Yes.

27 Q. I hope you're comfortable this morning.

28 A. I'm fine. 8196

1 Q. Doctor, did you have an occasion to analyze
2 a tape that was presented to you by Detective Craig
3 Bonner from the Santa Barbara County Sheriff's
4 Office?

5 A. Yes, sir.

6 Q. Could you tell us approximately when that
7 was?

8 A. They brought the tape to us on June 1st of
9 last year. And according to our logbook, which I
10 may want to refer to later -- but according to our
11 logbook, they stayed with us while we digitized the
12 tape. Digitizing means taking a copy of the audio
13 from the tape and putting it onto a computer. That
14 was done by a technician and I was standing there
15 while he did that. And then we gave the tape back
16 to Craig Bonner. We went up to my office and we
17 looked at it for a period of time. I don't remember
18 how long it was. There was another gentleman with
19 him, I believe, and then they left. And about a
20 month later, I went through and did a detailed
21 analysis of the tape and wrote a letter, which I
22 sent to him at the time.

23 Q. All right. The work that you do is off the
24 digital copy of that tape, then; is that correct?

25 A. That's correct.

26 Q. And the process of making a digital copy of
27 a tape, does that in any way transform the original
28 tape? 8197

1 A. No.

2 Q. It wouldn't affect the integrity of the
3 content of that tape?

4 A. No. There would be no effect on the tape at
5 all.

6 Q. What was your assignment in this case as to
7 the digital copy of that tape? What was your
8 assignment?

9 A. Our assignment was to determine if there
10 were any breaks in the audio.

11 Q. Just for purposes of clarity to make sure
12 that we're on the same topic, did you have an
13 opportunity to actually listen to the tape as well?

14 A. Yes, partly. We were listening to the tape,
15 but partly we were looking at pictures of the image
16 of the audio on the screen. I have listened to
17 about 90 percent of the tape.

18 Q. Is this a tape of what appears to be a
19 telephone conversation between two people,
20 predominantly two people?

21 A. Okay. Two people.

22 Q. An adult woman and an adult man and a child?

23 A. And a child, yes. Three people.

24 Q. Predominantly the adult woman and the adult
25 child -- the adult man?

26 A. That's right.

27 Q. All right. Doctor, what did you do with
28 this tape? The copy, that is. What were you 8198

1 seeking to do and what did you do?

2 A. Well, the primary thing we were asked to do
3 was to determine if there were any breaks in the
4 audio. And the first thing that I did was I -- I
5 put an image of the audio on the screen and just
6 looked at the entire tape at one time. And my
7 impression was that it was relatively continuous.
8 And -- because the background appeared to be about
9 the same level from the beginning of the tape to the
10 end. There's 22 minutes of audio on the tape. It's
11 a 30-minute tape.

12 And then I went in and I started at the
13 beginning and I looked at the segments which were
14 one minute long. And the first thing I noticed was
15 that, I think it was 13 seconds or so into the tape,
16 there appeared to be a discontinuity. And so I blew
17 that up and I took a look at it, and there was, in
18 fact, a gap at that time period.

19 And so having seen one, then I sort of had
20 some idea what I should look for if there were
21 others like that one. And so I moved along through
22 the tape, and I identified a number of these --
23 these gaps. The gaps are very short on the tape.
24 They're about two seconds each.

25 Q. All right. Tell us what you were able to
26 determine with regards to gaps in the tape.

27 A. We found 34 gaps. And they had a
28 characteristic signature. And the signature was 8199

1 very close to the same as when the tape was first
2 started. And by this I mean that if you start an
3 audiotape, there are wheels that take up reel on the
4 feed reel that have to turn, and it takes a little
5 while to get those to turn, "a little while" being a
6 second or so. And during that time period when the
7 amplifier is trying to put a voltage onto that tape,
8 it makes a little signature that looks a little bit
9 like this, and it's a couple tenths of a second
10 long.

11 And if you look at the beginning of the
12 tape, you get that signature very clearly the first
13 time it's turned on. There was no audio in front of
14 it and you see that signature.

15 And what I found, then, was a very similar
16 circumstance, not identical each time. But each
17 time there was a gap, there was a signature that
18 looked just like that one at the beginning.

19 Q. What would cause a gap in a tape?

20 A. Can I refer to my notes on this?

21 Q. Yes. Please, go ahead.

22 A. At the time I was analyzing it, I made a
23 note of what I thought might be causing these. And
24 instead of trying to remember it, I'd like to see if
25 I can find it in here and --

26 Q. Go ahead and take a look and read it, but
27 don't read it out loud.

28 A. Yeah. Okay. It was July 2nd, and I made a 8200

1 note --

2 MR. SANGER: I'm going to object. There's

3 no question pending.

4 THE COURT: Sustained.

5 Q. BY MR. ZONEN: What I'd like you to do is go

6 ahead and read the notes that you have made quietly

7 to yourself.

8 A. To myself.

9 MR. SANGER: And then after he does that,

10 I would like to see what notes he's referring to.

11 MR. ZONEN: I have no objection.

12 THE WITNESS: Okay.

13 MR. SANGER: May I approach, Your Honor?

14 Hang on, one second.

15 Your Honor, could we approach for a moment,

16 please?

17 THE COURT: Yes.

18 (Discussion held off the record at sidebar.)

19 THE COURT: I'm going to take a brief recess

20 to give counsel an opportunity to look at the notes

21 before further examination, so I'll see you in a few

22 minutes.

23 (Recess taken.)

24 --o0o--

25

26

27

28 8201

1 REPORTER'S CERTIFICATE

2

3

4 THE PEOPLE OF THE STATE)

5 OF CALIFORNIA,)

6 Plaintiff,)

7 -vs-) No. 1133603

8 MICHAEL JOE JACKSON,)

9 Defendant.)

10

11

12 I, MICHELE MATTSON McNEIL, RPR, CRR,

13 CSR #3304, Official Court Reporter, do hereby

14 certify:

15 That the foregoing pages 8161 through 8201

16 contain a true and correct transcript of the

17 proceedings had in the within and above-entitled

18 matter as by me taken down in shorthand writing at

19 said proceedings on April 29, 2005, and thereafter

20 reduced to typewriting by computer-aided

21 transcription under my direction.

22 DATED: Santa Maria, California,

23 April 29, 2005.

24

25

26

27 MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304

28 8202

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF SANTA BARBARA
3 SANTA MARIA BRANCH; COOK STREET DIVISION
4 DEPARTMENT SM-2 HON. RODNEY S. MELVILLE, JUDGE

5

6

7 THE PEOPLE OF THE STATE OF)

8 CALIFORNIA,)

9 Plaintiff,)

10 -vs-) No. 1133603

11 MICHAEL JOE JACKSON,)

12 Defendant.)

13

14

15

16

17 REPORTER'S TRANSCRIPT OF PROCEEDINGS

18

19 FRIDAY, APRIL 29, 2005

20

21 8:30 A.M.

22

23 (PAGES 8203 THROUGH 8304)

24

25

26

27 REPORTED MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304

28 BY: Official Court Reporter 8203

1 APPEARANCES OF COUNSEL:

2

3 For Plaintiff: THOMAS W. SNEDDON, JR.,

4 District Attorney BY: RONALD J. ZONEN,

5 Sr. Deputy District Attorney -and-

6 GORDON AUCHINCLOSS, Sr. Deputy District Attorney

7 1112 Santa Barbara Street Santa Barbara, California 93101

8

9

10 For Defendant: COLLINS, MESEREAU, REDDOCK & YU

11 BY: THOMAS A. MESEREAU, JR., ESQ. -and-

12 SUSAN C. YU, ESQ. 1875 Century Park East, Suite 700

13 Los Angeles, California 90067

14 -and-

15 SANGER & SWYSEN BY: ROBERT M. SANGER, ESQ.

16 233 East Carrillo Street, Suite C Santa Barbara, California 93101

17

18

19 For Witness DAVIS WRIGHT TREMAINE LLP

20 Ian Drew: BY: KELLI L. SAGER, ESQ. 865 South Figueroa Street

21 Suite 2400 Los Angeles, California 90017-2566

22

23

24

25

26

27

28 8204

1 INDEX

2

3 Note: Mr. Sneddon is listed as "SN" on index.

4 Mr. Zonen is listed as "Z" on index. Mr. Auchincloss is listed as "A" on index.

5 Mr. Mesereau is listed as "M" on index. Ms. Yu is listed as "Y" on index.

6 Mr. Sanger is listed as "SA" on index.

7

8

9 PLAINTIFF'S WITNESSES DIRECT CROSS REDIRECT RECROSS

10

11 KOONS, Harry 8224-SA 8230-Z 8231-SA

12 SMITH, Rosibel 8234-Z 8239-SA

13 DREW, Ian 8247-Z 8262-M (Nonjury)

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28 8205

1 EXHIBITS

2 FOR IN PLAINTIFF'S NO. DESCRIPTION I.D. EVID.

3

4 841 Book entitled "Boys Will Be Boys" 8163 8232

5 842 Book entitled "The Boy;

6 A Photographic Essay" 8163 8232

7 856 Photograph of file cabinet 8164 8166

8 857 Photograph of computer image of audiotape 8215 8218

9 858 Photograph of computer image

10 of audiotape 8215 8218

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28 8206

1 THE COURT: All right, Counsel.
2 MR. ZONEN: Thank you, Your Honor.
3 Q. Dr. Koons, we left off, I was asking some
4 questions about breaks in this --
5 BAILIFF CORTEZ: Your microphone.
6 Q. BY MR. ZONEN: Dr. Koons, when we left off,
7 I was asking you some questions about the breaks in
8 this tape, and I think you proffered the opinion
9 that there were 34 breaks; is that correct?
10 A. That's correct.
11 Q. All right. And then I had asked you what
12 types of things or occurrences could cause breaks of
13 such a nature, and you had referred to some notes
14 and you've read some notes.
15 A. Yes.
16 Q. All right. Are you prepared at this time to
17 answer that question?
18 A. Yes, I am.
19 I hope I can remember all four of them.
20 I identified four things that could cause breaks
21 such as this. So one is the "pause" button on the
22 tape-recorder. If you press the "pause" button and
23 you press it again to restart it, you would get a
24 break in the tape.
25 Another would be a press-to-talk telephone
26 that, I don't know if -- you may not be familiar
27 with these in the home context very often, but in a
28 classified context, you have a telephone with a 8207

1 button on the handle, and the only time you can hear
2 a person speak is when the button is pressed.

3 Another is the "mute" button on the
4 telephone would cause the audio to go out, and then,
5 when you unmute it, to come back in again.

6 And I don't remember the fourth one.

7 Q. All right. Would it help to look at your
8 notes again to see what it was?

9 A. Yeah, probably.

10 Oh, a voice-activated line; that if you have
11 a voice activation on your recorder, the recorder
12 will stop and start. It will start whenever it
13 hears a loud -- a signal such as a person beginning
14 to talk, and it will stop when a person stops
15 talking.

16 Q. Would that tend to explain breaks in a
17 first-generation tape?

18 A. Yes, it would.

19 Q. Would it explain breaks in a
20 second-generation tape?

21 A. No. It really can't do that, because a
22 second-generation tape is not made with a
23 microphone. It's made by copying or using wires
24 from one tape-recorder to -- the source to the
25 destination tape-recorder.

26 Q. Let's talk about the first generation, then,
27 if we could. Is it your understanding or does it
28 appear that this is a tape-recording of a telephone 8208

1 conversation?

2 A. Yes, I believe it is.

3 Q. How do people generally tape-record

4 telephone conversations?

5 MR. SANGER: Objection. Calls for

6 speculation; no foundation.

7 MR. ZONEN: I'm not asking this specific

8 time, but simply how is it done that telephone

9 conversations are taped.

10 THE COURT: The foundation is sustained.

11 Q. BY MR. ZONEN: Do you know how people

12 tape-record telephone conversations?

13 A. Yes, there are two basic ways to do it.

14 MR. SANGER: I'm going to move to strike as

15 nonresponsive beyond "Yes."

16 THE COURT: Stricken.

17 Q. BY MR. ZONEN: You said, "Yes."

18 A. Yes.

19 Q. During the course of the work that you have

20 done over the last ten years, have you, in fact,

21 tape-recorded telephone conversations?

22 A. Yes.

23 Q. And have you examined conversations that

24 have been tape-recorded?

25 A. Yes.

26 Q. And does your study require that you look

27 into the manner in which the conversations are

28 tape-recorded as well? 8209

1 A. Yes.

2 Q. And would that be important to your

3 analysis?

4 A. Yes.

5 Q. Okay. What are the ways in which telephone

6 conversations are tape-recorded?

7 A. There are two ways. One, you place a small

8 microphone on the handset. And that's usually not a

9 very good way, because it's not strongly coupled

10 into the conversation on the phone.

11 The second is to put a sensor in-line with

12 the handset. You have these modular plugs that plug

13 into a modern handset, and you have a device that

14 you plug in-line there, and so it picks up the

15 conversation going in both directions very well.

16 Q. Now, can you tell by listening to a

17 tape-recorded conversation what method was used to

18 tape-record that conversation?

19 A. Yes.

20 Q. Do you have a sense of what method was used

21 in this case?

22 A. I believe it was the in-line sensor.

23 Q. Why is that?

24 A. Because of the quality. It had a good

25 pickup at both ends of the conversation.

26 Q. Now, when we talk about first-generation or

27 second-generation tape, what are we talking about?

28 A. A first-generation tape is called a virgin 8210

1 tape, where the first audio is recorded onto the
2 tape. A second-generation tape is one of two
3 things. It's either an overrecording of that one,
4 or it's taking the material on the first tape and
5 recording it onto a second tape.

6 Q. All right. Now, can you tell whether this
7 recording is a first- or second-generation tape or
8 subsequent to that?

9 A. There's -- there's some evidence that it's a
10 second-generation tape.

11 Q. And what is the evidence that you saw?

12 A. The evidence is the first piece of
13 recording, the first 13 seconds or so of recording,
14 is very different than all of the other, which
15 suggested that the -- that the tape had been used
16 for something else and the second recording started
17 later in the tape.

18 Q. Can you tell whether or not this is a tape
19 that is a compilation of multiple conversations?

20 A. I personally cannot determine that.

21 Q. It could be or could not be?

22 A. It could be or could not be.

23 Q. All right. Now, is it possible that this
24 could be a tape-recording of a single conversation
25 but where pieces have been taken out, portions of
26 the conversation deleted?

27 A. If it's a second-generation tape, yes. If
28 it's a first-generation tape, probably not. 8211

1 Q. Okay. Let's -- go ahead and explain that to
2 us. Let's see, what's the first probability, or the
3 first possibility? The first-generation tape.
4 A. Okay. If it's --
5 Q. Tell us what you mean when you say "probably
6 not" in terms of first generation.
7 A. Okay. If it's a --
8 MR. SANGER: I'm going to object to this
9 line of questioning as no foundation.
10 THE COURT: Overruled.
11 You may answer.
12 Q. BY MR. ZONEN: Go ahead.
13 A. If it's a first-generation tape, you can
14 usually identify it by the length of the -- of the
15 pauses. For example, if you press the "pause" and
16 then you go some distance, it usually takes longer
17 than on a second-generation tape. And also, you can
18 tell by the context of the material that's recorded
19 on the tape where the breaks occur in it.
20 Q. All right. In this particular case, you
21 suggested a greater likelihood of second generation?
22 A. Yes.
23 Q. All right. And then we were asking some
24 questions -- I was asking some questions about
25 pauses on a second-generation tape and whether or
26 not this could be simply copied from another tape.
27 Explain how you would have those types of breaks
28 then, please. 8212

1 A. The -- the way that you -- you make a
2 high-quality second-generation tape with material
3 from other tapes, if that's what you mean --

4 Q. Yes.

5 A. -- is you would pick the section that you
6 want to record, you would turn on the two tapes and
7 record a section, and then you would pause the one
8 you're recording onto.

9 And then you would go to either another tape
10 or another place on the first tape, and you would
11 set it up so that you're about to record it again,
12 and you begin it a little ahead of time, and you hit
13 the "pause" button to start it recording again, and
14 you can record a second recording onto the tape.

15 You can take any number of tapes, then, and
16 put them onto one tape that way.

17 Q. What you effectively can do, then, is take
18 portions of an original tape and put it on a second
19 tape, and leave out whatever portions you wish to
20 leave out?

21 A. That's correct.

22 Q. Do you have any way of knowing whether the
23 tape you analyzed was, in fact, the product of that
24 kind of conduct?

25 A. Not really.

26 Q. I --

27 A. No.

28 Q. All right. You have no way -- let me reask 8213

1 that question.

2 A. From the analysis that we do, you cannot

3 determine that.

4 Q. Okay.

5 A. You would have to use the context to

6 determine that.

7 Q. All right. In other words, reading the

8 content of it?

9 A. Yes. Now, can I elaborate?

10 Q. Yes, please.

11 MR. SANGER: I'm going to object. There's

12 no question pending and there's no foundation based

13 on what was just said.

14 THE COURT: Foundation is -- no question

15 pending is sustained.

16 Q. BY MR. ZONEN: All right. Explain to me

17 exactly what the limitations are in terms of what

18 you're able to do.

19 A. We are able to -- to look at the audio in

20 several formats on the computer screen. And

21 normally what we look for for breaks are

22 discontinuities in the background or discontinuities

23 in the amplitude.

24 In this case, we found -- we found both, but

25 the -- the type is such that it could be generated

26 by either a "pause" button on a -- going to a

27 second-generation tape or possibly a "pause" button

28 on a first-generation tape. 8214

1 Q. All right.

2 A. It's only the context of the conversation

3 would tell you which it is.

4 Q. You can't tell whether, again, this is first

5 generation or second generation, other than the

6 clues that you have already testified to?

7 A. That's correct.

8 Q. All right. Doctor, I'd like you to look at

9 Exhibits No. 857 and 858 that are before you. Tell

10 us what those two documents are.

11 A. May I start with the second one?

12 Q. 858?

13 A. Yeah.

14 Q. Yes. Please go ahead.

15 A. 858 is a record of the amplitude of the

16 signal from the tape for 1.8 seconds beginning at

17 two minutes and about 37 seconds into the tape. And

18 in the center of the picture, it shows a section

19 where, first of all, the level goes almost to zero,

20 and then it's at a very low level. Then there's a

21 transient at the turn-on and then it's followed by

22 speech. So there's speech at the beginning, speech

23 at the end, and the transient in the middle is what

24 I have been calling a break.

25 Q. And the other exhibit, 857, what is that?

26 A. 857 is the same time period with a different

27 depiction. This shows what we call an audiogram, or

28 a spectrogram, and it shows the intensity as a 8215

1 function of frequency and then with time running
2 along the horizontal or X axis, and it shows in the
3 background the same break as a lightening of the
4 signal. So this is two different ways of looking at
5 a break at exactly the same time period on the tape.

6 Q. How did you generate those two exhibits?

7 A. We use a software tool called Adobe
8 Audition, and that is actually listed up on the --
9 on the menu line on the screen. And this is a
10 screen capture where we take the image from the
11 screen and we capture it and we save it as a file on
12 the disk. So this is what we were looking at at the
13 time.

14 Q. So this is actually the equivalent of a
15 photograph, or a copy of --

16 A. A photograph of the screen. An image of the
17 screen.

18 Q. Yes. Of exactly the image that you look
19 at --

20 A. That's correct.

21 Q. -- when you make your determinations --

22 A. That's correct.

23 Q. -- and analysis?

24 A. Yes.

25 Q. And this is for a relatively small period of
26 time, is it?

27 A. 1.8 seconds it says on here.

28 Q. And in 1.8 seconds, does it generate 8216

1 sufficient information that you can actually see and
2 identify a break at that time point?

3 A. Yes, the -- yes.

4 Q. You talked to us about the signature. You
5 used that term early on in your testimony. What
6 does that refer to?

7 A. The signature is shown on both of these.

8 It's shown best on 858, and that's the -- there is
9 a -- a wave in the line at 238, just before 238.1
10 seconds, which is what happens when you turn this
11 particular tape-recorder on.

12 Q. All right. Are these breaks relatively
13 short in duration?

14 A. They're very short. This one is only about
15 a second long.

16 Q. The other 33 breaks in this telephone
17 conversation, are they comparable to that one as
18 well?

19 A. Yes.

20 Q. What does that suggest to you, that all of
21 the breaks are roughly comparable and fairly short
22 in duration?

23 A. That they were -- I think in this case, in
24 addition to the signature, they were all made in the
25 same way.

26 Q. All right. Would it be difficult to have
27 relatively short breaks if you are stopping and
28 starting a tape-recording during the course of a 8217

1 conversation?

2 A. Well, the breaks would still be short. It's
3 the context that's different.

4 Q. Oh, I see. The content of the conversation
5 itself. Okay.

6 The two exhibits that we've been referring
7 to, 857 and 858, do they accurately depict the
8 content contained in those exhibits? In other
9 words, are they an accurate depiction of what you
10 looked at during the course of your examination?

11 A. Yes, they are.

12 MR. ZONEN: Your Honor, I would move to
13 introduce 857 and 858 into evidence.

14 MR. SANGER: No objection.

15 THE COURT: They're admitted.

16 MR. ZONEN: And may we publish those two at
17 this time?

18 THE COURT: Yes.

19 Q. BY MR. ZONEN: In front of you should be a
20 laser that I left -- you have it. Good.

21 Go ahead, please, and tell us what it is
22 that you're looking at.

23 A. Yes, we're looking at an image of -- do I
24 have to talk close to this?

25 MR. SANGER: We haven't identified which
26 exhibit is up there, for the record.

27 MR. ZONEN: 858. That's Exhibit 858 that's
28 currently being shown. 8218

1 Q. And yes, I'm sorry, I know that's an
2 awkward position, but you do have to continue to
3 speak through the microphone.

4 A. They won't be able to see through me.

5 This is an image of the screen when we were
6 analyzing the tape, and the time runs along the
7 bottom axis here. It's virtually impossible for you
8 to read it, but it starts at two minutes 36.994
9 seconds. That means two minutes and essentially
10 37 seconds into the tape. It's very difficult to
11 read this little number down here, but that says
12 that the view is 1.8 seconds long. So the time from
13 here to there is 1.8 seconds.

14 The signature is the amplitude of the
15 signal, and it's centered at the center, about zero.
16 And the best analogy that I can make with
17 this is, if there are people here that are old
18 enough to remember what a vinyl record is, this is
19 very much like the groove in that vinyl record; that
20 the needle would be moving along here, and so it
21 would move faster here, and hardly move at all here,
22 and then it goes through a big bump, and then more
23 here. And by -- on a vinyl record, it reproduces the
24 audio in the same way that the voltage that we're
25 displaying here, when it's passed through a speaker
26 on a computer, reproduces the speech.

27 Q. Do you see the signature that you refer to?

28 A. Yes. The signature extends from here to 8219

1 here, right in -- right in the center, and this is
2 the primary signature which I've been calling the
3 turn-on signature.

4 Q. And the break that you refer to?

5 A. Yes, the break is really this entire time
6 period, that during this time period the audio
7 turned off, right here. It's very low here. And
8 then this is the turn-on signature when the reel
9 started to come back up to speed. And then there's
10 normal speech after about this time here. So this
11 is all a transient that occurred during what I call
12 the break in the tape.

13 Q. All right. Let's go ahead to 858, if we
14 can.

15 A. Okay. This is exactly the same --

16 MR. SANGER: Excuse me, Your Honor.

17 MR. ZONEN: We need a question.

18 MR. SANGER: I think this is 857. Am I
19 wrong?

20 THE WITNESS: Yes, this is --

21 MR. ZONEN: Forgive me. My dyslexia is
22 acting in.

23 This is 857. The last one, then, was 858,
24 if we could correct the record accordingly.

25 Q. Please go ahead and tell us about 857.

26 A. Yes, this is the same time period, starting
27 at 236.994 and extending for 1.8 seconds across the
28 axis here. And what's displayed on the vertical 8220

1 axis now is frequency.
2 And the best way to explain this is if you
3 look at this signature over here, this is a word
4 that a person has spoken, and what you can see is
5 the fundamental of their voice box and then the
6 harmonics of their -- of their voice. And you can
7 also see that over here and over here.
8 And this is the time period which was very
9 quiet where I said that the tape had turned off.
10 And you can see that the noise at the bottom, which
11 is indicated by the yellow, has gone away. The blue
12 indicates the lowest volume at that frequency; the
13 green, an intermediate volume; the yellow, a louder
14 volume; and the red, the loudest volume.
15 And the frequency scale is on the left over
16 here. It's impossible to read it there. This is
17 500 hertz -- oop, no, I think you want to....
18 Okay. Yes, okay. So this is a thousand
19 hertz, and it goes well above what most people's
20 hearing is at, at ten kilohertz up here. Take it
21 back to the full....
22 So if you can remember what I showed on the
23 preceding exhibit, this is the period when it went
24 very quiet. This is a period where there was just a
25 little bit of low frequency noise here. This is the
26 transient, and this is the beginning where it begins
27 to have speech again over here. So this is the
28 characteristic signature, on this particular media, 8221

1 of a break.

2 Q. Doctor, you had mentioned something about a

3 voice-activated tape-recorder. What is a

4 voice-activated tape-recorder?

5 A. A voice-activated tape-recorder is a

6 tape-recorder which, if the room goes silent, turns

7 off. And if somebody speaks in the room or there's

8 a noise in the room, the tape-recorder turns back on

9 again.

10 Q. Does there generally have to be a period of

11 silence before the tape-recorder is activated or

12 deactivated?

13 A. Yes, it usually takes quite a bit of time

14 before it deactivates, because it doesn't want to

15 miss speech. And so they have a circuit that waits

16 a long time, in terms of seconds, for the silence to

17 decide to turn off, but then they usually turn on

18 very rapidly because they want to get the first

19 words.

20 Q. Okay. Doctor, do you have an opinion as to

21 whether this tape is the product of a

22 voice-activated tape-recorder and then those breaks

23 would have been caused by silence in the

24 conversation?

25 A. My opinion is it's not voice-activated.

26 Q. And why is that?

27 A. Because the turn-off occurred too rapidly

28 after the speech right here. This is only a few 8222

1 tenths of a second.
2 MR. ZONEN: All right. We can turn the
3 lights on and turn off the projector at this time.
4 Q. Doctor, just a couple of final questions.
5 Do you have an opinion as to the nature of
6 the equipment that was used in this particular case?
7 MR. SANGER: I'm going to object as either
8 asked and answered or it's vague.
9 THE COURT: Overruled.
10 Q. BY MR. ZONEN: Go ahead, please.
11 And I guess by "equipment," I mean both
12 telephones and tape recorders.
13 MR. SANGER: Then it's compound.
14 THE COURT: Just a minute.
15 THE WITNESS: I really have --
16 THE COURT: I'll sustain the objection.
17 Q. BY MR. ZONEN: Let's talk about telephones.
18 Does it make a difference to you in terms of
19 your analysis of what type of phones are used?
20 A. Only in the sense of whether it was
21 voice-activated or not.
22 Q. Okay.
23 A. But otherwise, no.
24 Q. Or the recording equipment?
25 A. No.
26 Q. Okay. Do you have a sense of where the
27 recordings took place?
28 A. No. 8223

1 Q. All right. Is there any information that
2 would be -- let me rephrase that just for one
3 second.
4 In terms of resolving the question of
5 whether or not this is multiple conversations as
6 opposed to a single long conversation, are you able
7 to hear any unique dynamics in the sounds that would
8 send to suggest that there were recordings at
9 different locations?
10 A. No.
11 Q. Are you able to tell one way or the other?
12 A. No.
13 MR. ZONEN: Okay. I have no further
14 questions.
15 THE COURT: Cross-examine?
16
17 CROSS-EXAMINATION
18 BY MR. SANGER:
19 Q. All right. Dr. Koons, the bottom line to
20 this is that you had a tape which you analyzed, and
21 you believe that the tape -- the recording process
22 was stopped several times during the course of the
23 recording; is that right?
24 A. Yes, sir.
25 Q. All right. You don't know if it was stopped
26 for five minutes, or ten minutes, or for a second;
27 is that correct?
28 A. That's correct. 8224

1 Q. And you didn't really listen to the tape to
2 hear the context when you did your initial analysis
3 of this tape; is that correct?

4 A. Yes.

5 Q. Recently you decided to listen to the tape
6 to see if you could kind of hear what the people
7 were saying, right?

8 A. Right.

9 Q. And when you listened to the context, as far
10 as you could tell, it seems to be pretty much a
11 continuous conversation, correct?

12 A. Most, but not all of it.

13 Q. The first 13 seconds you had a question
14 about; is that right?

15 A. Yes.

16 Q. All right. And, now, when you looked at the
17 sonographic, if I'm using the right term, analysis,
18 that was pretty much consistent with what you heard
19 when you listened to it like the rest of it; is that
20 right?

21 A. Yes.

22 Q. In other words, you pretty much have the
23 same background noise. You've got the same level of
24 speech that goes throughout the entire tape; is that
25 correct? With the exception of the first 13
26 seconds.

27 A. That's correct.

28 Q. And you had speculated in your bench 8225

1 notes -- in fact, you said, "Speculate on causes,"

2 right?

3 A. Right.

4 Q. And you said, "Pause on tape-recorder;

5 voice-activated line; push-to-talk phone; mute

6 button," right?

7 A. Right.

8 Q. Now, what is an AGC?

9 A. An AGC is an automatic gain control circuit,

10 and the point of an AGC is to try to make the audio

11 level uniform on a tape.

12 If you have, for instance, a conference with

13 people sitting around a large table, and you have a

14 tape-recorder in the middle, that the person closest

15 to it will be naturally louder than the person at

16 the end of the table, and the automatic gain

17 control, when it hears a period when the audio is

18 weak, tries to push it up and amplify it, and if

19 it's strong, it brings it down a little bit so it's

20 uniform on the tape.

21 Q. And you determined that you did not think

22 this was an automatic gain control function that was

23 causing these apparent breaks; is that correct?

24 A. That's correct. There is no automatic gain

25 control on this recorder.

26 Q. So as it stands, you really don't know what

27 happened, but there was some kind of break?

28 A. Yes, there are breaks. 8226

1 Q. All right. You also indicated that there's
2 a signature to these breaks, simply meaning that
3 they appear to have been caused by the same
4 mechanism; is that right?

5 A. That's right.

6 Q. And from what you could tell by looking at
7 it, it appeared to be some kind of a mechanical
8 function that caused this break; is that right?

9 A. That's right.

10 Q. All right. In other words, somebody pushed
11 a button, either hit a "stop" button on the
12 recorder, or a "mute" button, or a "pause" button,
13 something like that?

14 A. Can I elaborate on that?

15 Q. Yes.

16 A. More specifically, by "mechanical," I meant
17 that it had something to do with probably the
18 rotation of the wheels on the -- the drive on the
19 tape-recorder rather than the button itself. That
20 the wheel will take a little longer or a little
21 shorter to take up slack, for example, at the
22 beginning and end of the tape and the middle of the
23 tape. And so there are many different mechanical
24 things like that, rather than the button itself.

25 Q. Okay. Well -- all right. That's fair
26 enough. In other words, the way these cassette
27 tapes work is that there's a magnetic head --

28 A. Uh-huh. 8227

1 Q. -- that will alter the tape itself
2 magnetically --
3 A. Yes.
4 Q. -- when input occurs; is that correct?
5 A. Yes.
6 Q. So somebody talks; it's translated into
7 energy that affects the magnetic head, that in turn
8 affects the tape; is that right?
9 A. That's correct.
10 Q. So as the tape turns by the head, that's how
11 you record it, right?
12 A. Right.
13 Q. And if you stop the tape from turning, it
14 stops recording?
15 A. Yes.
16 Q. All right. And so your determination is
17 that at some point it looks like this tape was
18 stopped from time to time?
19 A. Right.
20 Q. Now, you said you couldn't tell if it was
21 first generation or second generation; is that
22 correct?
23 A. That's true.
24 Q. And you did not do an analysis of the actual
25 tape?
26 A. Physically.
27 Q. Physical analysis of the tape. All right.
28 And there are labs that can do that? 8228

1 A. I believe so, yes.

2 Q. All right. So you just looked -- once you

3 digitized it, you just looked at the actual

4 electronic remnants of whatever it was that was done

5 to this tape? In other words --

6 A. I don't want to use the word "remnants,"

7 but, yes.

8 Q. I was trying to think of a better word.

9 A. I know what you mean.

10 Q. The electronic imprints or whatever it was.

11 A. It's the signature of the electronic signal

12 on the tape.

13 Q. If you actually look at a tape, sometimes

14 you can determine that there are erasure marks or

15 there's other actual physical --

16 A. Right.

17 Q. -- marks on the tape; is that right?

18 A. We did not do that.

19 Q. Did not do that.

20 And I take it, from your analysis, you have

21 no way of determining who it was that stopped this

22 tape from turning from time to time?

23 A. No.

24 Q. And you have no idea how long the tape

25 stopped; is that correct?

26 A. That's correct.

27 Q. It's even possible that there could be a

28 malfunction in the tape machine, is it not? 8229

1 A. Possibly. But they were not random.

2 Q. All right. So you don't know how long the

3 tape stopped; in other words, if somebody stopped

4 the tape, got up, went out of the room, came back,

5 or something?

6 A. That's true. Yes.

7 Q. It could have been just a second that was

8 not recording, couldn't it?

9 A. Yes.

10 MR. SANGER: All right. Okay. Thank you.

11 I have no further questions.

12

13 REDIRECT EXAMINATION

14 BY MR. ZONEN:

15 Q. Doctor, explain to us what you mean by "not

16 random."

17 A. If you have -- if you have a random process,

18 the -- the distribution of the stops will obey a

19 statistical function called a Poisson function, and

20 these do not fit that function. They're almost

21 uniformly spaced throughout the tape, except at the

22 end, where they become more rapidly in the last

23 minute.

24 Q. All right. Do you have an opinion as to

25 whether the breaks in this particular tape are

26 caused by a malfunction of the recording device?

27 A. My opinion is they are not.

28 MR. ZONEN: Thank you. No further 8230

1 questions.

2

3 RECROSS-EXAMINATION

4 BY MR. SANGER:

5 Q. Actually, I didn't notice that. So let me

6 ask you about that.

7 You actually -- in your bench notes there,

8 you broke down the times. Are you saying there's

9 essentially a uniform time gap between the tape --

10 between the --

11 A. Between the gaps.

12 Q. Between the gaps?

13 A. Not uniform. It's not periodic. But

14 they -- there is a group at the end which is out of

15 character with the other ones, which suggest that

16 it's not random. There were a bunch that occurred

17 in the 21st minute and most of the other minutes had

18 only one or two.

19 Q. I see what you're saying.

20 A. There was also one period around six to ten

21 minutes where there was no gap at all. So it's not

22 random.

23 Q. Okay. When you say it's not random, do you

24 mean it's --

25 A. "Random" means a throw of the dice did it.

26 Q. Okay. So because there are groupings, you

27 feel that there's some causation?

28 A. That's right. 8231

1 Q. So if there was a mechanical problem of some
2 sort, it would have to be a mechanical problem that
3 was more prevalent at one point?
4 A. Than the others, right.
5 MR. SANGER: All right. Okay. Thank you.
6 No further questions.
7 MR. ZONEN: No further questions.
8 THE COURT: Thank you. You may step down.
9 MR. ZONEN: Your Honor, the next two
10 witnesses require a Court ruling.
11 THE COURT: The Court will admit Exhibits 841
12 and 842 and make a finding that the probative value
13 exceeds the prejudicial effect under 352.
14 MR. ZONEN: I'm sorry, I didn't hear the
15 last part of your ruling.
16 THE COURT: It was just a finding under 352.
17 MR. ZONEN: And the finding was it's
18 admissible?
19 THE COURT: They are admissible. They are
20 admitted.
21 MR. ZONEN: Thank you.
22 We'll call Detective Rose White to the
23 stand, please.
24 MR. SANGER: Is there a limiting instruction
25 that goes along with that, Your Honor?
26 MR. ZONEN: Smith. I'm sorry, Smith.
27 THE COURT: We could do one.
28 MR. SANGER: Your Honor, would it be 8232

1 possible to approach briefly to discuss that?

2 THE COURT: Yes.

3 (Discussion held off the record at sidebar.)

4 THE COURT: I think the next two witnesses

5 are going to involve these exhibits, are they, or

6 the next one?

7 MR. ZONEN: The next one witness.

8 THE COURT: (To the jury) The next witness

9 is going to involve testimony about two books,

10 Exhibits 841 and 842. And I want to advise you that

11 these exhibits fall within the same instruction I

12 gave you regarding the 1108 evidence, Code Section

13 1108 evidence relating to the alleged prior sexual

14 acts.

15 Remember those instructions I gave you

16 sometime ago? This material is connected to that

17 and has the same limitation. At the end of the

18 trial, we'll reiterate that instruction for you so

19 that it's -- this won't be the last time you hear

20 the instruction.

21 MR. ZONEN: We'll call Rose Smith to the

22 stand, Detective Smith, please.

23 THE COURT: You've already been sworn. You

24 may be seated.

25 DETECTIVE SMITH: Thank you, Your Honor.

26

27 ROSIBEL SMITH

28 Having been previously sworn, resumed the 8233

1 stand and testified further as follows:

2

3 THE COURT: You're still under oath.

4 THE WITNESS: Yes, Your Honor.

5

6 DIRECT EXAMINATION

7 BY MR. ZONEN:

8 Q. The jury hasn't heard who you are yet.

9 You've already been sworn in, but tell us who you
10 are, please.

11 A. Yes. I'm Detective Rosibel Smith.

12 R-o-s-i-b-e-l. S-m-i-t-h.

13 I'm a police detective with the City of Los

14 Angeles, Los Angeles Police Department, currently

15 assigned to the Threat Management Unit of the

16 Detective Support Division.

17 Q. How long have you been an officer with the

18 Los Angeles Police Department?

19 A. For a little over 20 years.

20 Q. And your current assignment is what again,
21 please?

22 A. The Threat Management Unit of the Detective

23 Support Division, and we are responsible for

24 investigating stalking cases, criminal threats and
25 workplace violence.

26 Q. How long have you been in that unit?

27 A. For six years.

28 Q. And prior to that, what work did you do? 8234

1 A. Prior to that, I worked a station called
2 Rampart Detectives, and then prior to that Juvenile
3 Division.
4 Q. Have you worked as a sex crimes
5 investigator?
6 A. Yes, I have.
7 Q. For what period of time?
8 A. For nine years.
9 Q. And which nine-year period?
10 A. From 1988 to 1997.
11 Q. As part of your responsibilities as a sex
12 crimes investigator, did you conduct and execute
13 search warrants?
14 A. Yes, I did.
15 Q. In August of 1993, did you execute a search
16 warrant at Neverland Ranch in Santa Barbara County?
17 A. Yes, I did.
18 Q. Did you do that with others?
19 A. Yes.
20 Q. A few others, I would assume?
21 A. There were several others, detectives and
22 officers at the location, yes.
23 Q. And do you remember which -- where on the
24 property at Neverland Ranch that you personally
25 conducted a search?
26 A. In the master bedroom of Mr. Michael
27 Jackson's residence.
28 Q. All right. Now, the -- I'd like you to look 8235

1 at three exhibits that are in front of you at this
2 time, Exhibit No. 841 and 842 already in evidence.

3 A. Okay.

4 Q. Tell us what those two exhibits are. Let's
5 start with the first one, 841.

6 A. 841 is a hard-cover book entitled, "Boys
7 Will Be Boys."

8 Q. And what is that a book of?

9 A. It's a book depicting images of young boys.

10 Some are clothed. Some are nude. And various
11 stages of dress. Depicts them in various positions,
12 at play, swimming, jumping. So....

13 Q. Is there an inscription in the front of that
14 book?

15 A. Yes, there is.

16 Q. Is that an inscription in a person's
17 handwriting or printing?

18 A. Yes.

19 Q. Did you seize that book?

20 A. Yes, I did.

21 Q. From where did you seize that book?

22 A. From a file cabinet in the master bedroom of
23 Mr. Jackson's residence.

24 Q. Now, Mr. Jackson's residence is a -- the
25 bedroom portion of his residence is actually a
26 suite; is that correct?

27 A. Yes.

28 Q. Is there an upstairs and a downstairs? 8236

1 A. Yes, there is.

2 Q. And the portion from where you seized these
3 items, was that from the upstairs or the downstairs?

4 A. It was from the downstairs portion of the
5 bedroom.

6 Q. And can you -- can you tell us where
7 specifically it was seized from?

8 A. It was seized from a file cabinet within a
9 closet in the master bedroom.

10 Q. Let's go ahead to the next exhibit, 842, and
11 tell us what that is, please.

12 A. This is another book, hard-cover book,
13 entitled, "The Boy; A Photographic Essay."

14 Q. Can you tell us what this is, please?

15 A. And again, this is a book depicting images
16 of young boys, again in various stages of clothing
17 and undress. Some appear to be be nude. And again,
18 various poses; playing, swimming, jumping.

19 Q. Is there an inscription in the front of that
20 book as well?

21 A. Yes.

22 Q. Now, Detective, those two items, were they
23 seized from the same location?

24 A. Yes, they were.

25 Q. And I think you've already described that
26 location; is that correct?

27 A. Yes.

28 Q. I'd like you to look at another exhibit 8237

1 that's before you, which is 856 in evidence.

2 A. Okay.

3 Q. What is 856?

4 A. 856 is a photograph of the search warrant.

5 We, as law enforcement, are required to photograph

6 the location that we serve the warrant on. And this

7 is the photograph of the file cabinet where the

8 books were seized from.

9 Q. All right. And in that file cabinet, are

10 there multiple drawers?

11 A. Yes, there are.

12 Q. Do you actually know from which drawer those

13 books were seized?

14 A. Yes, I do.

15 Q. Which drawer was that?

16 A. They were seized from the third drawer.

17 MR. ZONEN: Your Honor, may I publish that

18 exhibit? It's already in evidence.

19 THE COURT: Yes.

20 Q. BY MR. ZONEN: Describe for us, please, the

21 photograph that we're looking at.

22 A. To the rear of the photograph is the file

23 cabinet containing the four drawers. The third

24 drawer is where I seized the books from. So it's

25 partly covered by, looks like maybe a briefcase of

26 some sort, or something there.

27 Q. All right. Detective, how were you able to

28 get into the closet? How were you able to get into 8238

1 the file cabinet?

2 A. The closet was -- actually, the room was
3 locked. And we had to get keys for the room, as
4 well as for the file cabinet, to get access into the
5 room and the file cabinet itself.

6 Q. Were you able to do that?

7 A. Yes, we were.

8 MR. ZONEN: Thank you. I have no further
9 questions.

10 You can turn the lights on.

11 MR. SANGER: Leave it. Leave it.

12 MR. ZONEN: Do you need this?

13 MR. SANGER: Yeah.

14

15 CROSS-EXAMINATION

16 BY MR. SANGER:

17 Q. Detective Smith, how are you?

18 A. Fine, thank you, sir. How are you?

19 Q. You mentioned, Detective, that you were --
20 that you're currently assigned to a unit with the
21 Los Angeles Police Department that investigates a
22 number of things, and I think you said threats?

23 A. Yes.

24 Q. Okay. And one of the things you mentioned
25 is stalking; is that correct?

26 A. That's correct.

27 Q. And do you, in the course of your duties,
28 investigate celebrity stalkings? 8239

1 A. Yes.

2 Q. All right. And many times celebrities, in
3 your experience, you find are stalked by fans; is
4 that right?

5 A. Yes.

6 Q. And is this -- does this pose a danger to
7 the celebrities?

8 A. It could, yes.

9 Q. So you take those seriously?

10 A. Absolutely.

11 Q. In fact, somebody may claim to be a fan, and
12 they come out --

13 MR. ZONEN: I'm going to object as exceeding
14 the scope of the direct examination.

15 THE COURT: Sustained.

16 MR. SANGER: All right. Very well.

17 Q. Your assignment back in 1993 was working
18 with the detectives division in sex crimes; is that
19 correct?

20 A. Yes.

21 Q. That's Los Angeles Police Department?

22 A. Yes.

23 Q. So you got a warrant -- I say "you." Your
24 department got a warrant to search Mr. Jackson's
25 home in Santa Ynez, in Los Olivos, California; is
26 that correct?

27 A. That's correct.

28 Q. That's not within the City of Los Angeles, I 8240

1 take it?

2 A. No, it is not.

3 Q. And you got a warrant issued by a Los

4 Angeles judge?

5 A. Yes.

6 Q. All right. And the people that came with

7 you at that time, among others, were fellow Los

8 Angeles police officers; is that correct?

9 A. Yes.

10 Q. And you ended up seizing these books that

11 you talked about in the course of that search in

12 1993; is that right?

13 A. That is correct.

14 Q. Now, these two books -- I think -- are they

15 still up there in front of you?

16 A. Yes, they are.

17 Q. Those two books are not unlawful to possess

18 by adults in California; is that correct?

19 A. That is correct.

20 Q. And do you have any idea how Mr. Jackson

21 came into possession of those books or how they

22 ended up in this locked file cabinet?

23 A. From the inscription in Exhibit No. 842, it

24 appears that possibly a fan, somebody named Rhonda,

25 possibly gave the book to him. And the other one,

26 I do not know.

27 MR. SANGER: All right. Your Honor, may I

28 approach and retrieve the books? 8241

1 THE COURT: Yes.

2 MR. SANGER: Thank you.

3 Your Honor, I'd like to put the book up on
4 the screen, if I may.

5 THE COURT: Yes.

6 Q. BY MR. SANGER: I'll put the cover up there,
7 first of all. And it says, "The Boy; A Photographic
8 Essay," and this is -- this is Exhibit 842, correct?

9 A. Yes.

10 Q. All right. You referred to the inscription,
11 and I'm going to put the inscription up on the
12 board. I'm not going to put the whole one up
13 because it doesn't fit yet.

14 But in any event, this is on the -- I know
15 there's a word for it, but it's on the first actual
16 page of the book, whatever you call it, right inside
17 the cover; is that right?

18 A. That's right.

19 Q. Okay. And you were -- based on this
20 inscription, it appeared to be a book that was
21 presented to Mr. Jackson, or to his people, by a
22 fan; is that correct?

23 A. It appears to be, yes.

24 Q. And then down at the bottom, it looks like
25 it says, "1983," and that could be "Chicago," but I
26 don't know. Or is it something else? What do you
27 think?

28 A. I -- it's really hard to read. It could 8242

1 possibly be "Chicago," but I'm not certain.

2 Q. But in any event, 1983 is the date?

3 A. Yes.

4 Q. At the time that you did this -- that you

5 did this search in 1993, did you determine that Mr.

6 Jackson not only received, but kept a tremendous

7 amount of material from fans that was sent to him?

8 I'm not just talking about books, but just things in

9 general that Mr. Jackson received.

10 Did he seem to have a lot of things that had

11 been sent to him by fans, if you can remember?

12 A. I do recall him -- or locating letters,

13 notes, from fans.

14 Q. All right. So even back then, in '93, you

15 were -- or I shouldn't say "even." He had a lot of

16 fans sending him things. That was your

17 understanding as you were doing this search; is that

18 correct?

19 A. Yes.

20 MR. SANGER: All right. Now, with the

21 Court's permission, I'd like to put up 841. That's

22 the other book.

23 THE COURT: Yes.

24 MR. SANGER: If I may.

25 Q. And this is the cover. We can't get the

26 whole thing on at once, but it's 841 up in th

27 corner, for the record, and it says, "Boys Will Be28 Boys," and it has a picture there;
right? 8243

1 A. Yes.

2 Q. That's the cover. And by the way, this is a
3 commercially -- both of these are commercially
4 available books; is that correct?

5 A. Yes.

6 Q. Okay. And when you open this book up, it
7 actually says -- let's look right over here. I'm
8 going to try to talk loudly while I'm holding this.

9 It says on the flyleaf, "Book Adventures,
10 Inc.," and the copyright 1966. Do you see that?

11 A. Yes. Down at the bottom.

12 Q. All right. And then if we look up here, at
13 the top, again the first page -- I'm sure somebody
14 who knows books knows the correct word for that.

15 But the very first page, up at the top it says,
16 "OP" -- "OP '88." That means "Out of print, '88,"
17 does it not? Or do you know?

18 A. I'm not certain what that means.

19 Q. And somebody has written up there, "Very
20 scarce."

21 A. Yes.

22 Q. Do you see that? That was there on the book
23 when you seized it; is that right?

24 A. Yes, it was.

25 Q. And there's some initials that look like
26 "MJ" up in the upper right-hand corner?

27 A. Yes.

28 Q. Now, could you read the inscription for the 8244

1 record, please? And I'll move it up as you go
2 along.

3 A. "Look at the true spirit of happiness and
4 joy in the boys' faces. This is the spirit of
5 boyhood, a life I've never had and will always dream
6 of. This is the life I want for my children. MJ."

7 MR. SANGER: Thank you. I have no further
8 questions.

9 MR. ZONEN: I have no further questions.

10 THE COURT: Thank you. You may step down.

11 THE WITNESS: Thank you.

12 MR. ZONEN: Your Honor, the next witness
13 requires a pre-trial hearing.

14 THE COURT: (To the jury) All right. I'm
15 going to excuse you again. We have to have another
16 hearing before this witness may be presented.

17 Is the witness here now?

18 THE BAILIFF: The Judge is addressing you.

19 MR. ZONEN: I'm sorry, Your Honor. I'm not
20 hearing well today.

21 THE COURT: Is the witness here now?

22 MR. ZONEN: Yes, the witness is here.

23

24 (The following proceedings were held in
25 open court outside the presence and hearing of the
26 jury:)

27

28 MR. ZONEN: May his counsel sit at the 8245

1 counsel table?
2 THE COURT: Yes, for this hearing.
3 Please remain standing and raise your right
4 hand. Face the clerk over here.
5
6 IAN DREW
7 Having been sworn, testified as follows:
8
9 THE WITNESS: I do.
10 THE CLERK: Please be seated. State and
11 spell your name for the record.
12 THE WITNESS: Ian, I-a-n. Last name is Drew,
13 D-r-e-w.
14 THE CLERK: Thank you.
15 THE COURT: Counsel?
16 MR. ZONEN: May I proceed?
17 THE COURT: No, just a moment. I'm sorry, I
18 want to interrupt you.
19 I'm not sure that I made that finding on the
20 record or at sidebar on Exhibits 841 or 842, both of
21 them, but I previously had reviewed the books and
22 made a finding, preliminary finding, that there were
23 photographs within each book that could be
24 determined to be sexually explicit photographs by a
25 trier of fact, and then I made a finding on -- under
26 352, which I know is on the record.
27 Now you may proceed with this witness.
28 MR. ZONEN: Thank you, Your Honor. 8246

1 DIRECT EXAMINATION

2 BY MR. ZONEN:

3 Q. Mr. Drew, good morning.

4 A. Good morning.

5 Q. Sir, what is your current occupation?

6 A. Editor at US Weekly Magazine.

7 Q. What does that mean? What do you do?

8 A. Everything from reporting on stories, to
9 coordinating stories, to a wide array of covering
10 the celebrity news.

11 Q. How long have you worked in that capacity?

12 A. Um, about two and a half years.

13 Q. And how long with US Magazine specifically?

14 A. Oh, no. At US Magazine, two and a half
15 years, excuse me. And in the capacity about three
16 and a half years.

17 Q. What is your -- are you a journalist?

18 A. Yes.

19 Q. What is your training and experience as a
20 journalist?

21 A. I have about three and a half years
22 experience. And I started working at a small
23 newspaper and then moved up to different
24 publications, and have been at US Weekly the
25 longest.

26 Q. If I can direct your attention back to
27 February of the year 2003. Were you working with or
28 for Michael Jackson at that time? 8247

1 A. No.

2 Q. Were you working for anybody who was working
3 with or for Michael Jackson?

4 A. No.

5 Q. All right. Did you have any association
6 with either Marc Schaffel or Ronald Konitzer or
7 Dieter Weizner?

8 MS. SAGER: I'm going to object, Your Honor,
9 to the extent that's calling for unpublished
10 information. I think the question is vague.

11 THE COURT: They can't hear you. Is your
12 microphone on?

13 MS. SAGER: Sorry, Your Honor.

14 I'm objecting to the question as calling for
15 unpublished information and as vague.

16 THE COURT: Sustained on both grounds.

17 Q. BY MR. ZONEN: Were you called upon to
18 conduct an interview of a family, including a mother
19 of children by the name of Janet Arvizo?

20 A. No.

21 Q. Were you expecting to do an interview with
22 Janet Arvizo?

23 A. Yes.

24 Q. Did that interview ever take place?

25 A. No.

26 Q. Who was it that was coordinating that
27 interview with you?

28 A. Ronald Konitzer and Marc Schaffel. 8248

1 Q. Did you know either Ronald Konitzer or Marc
2 Schaffel prior to that day?

3 A. Yes.

4 Q. What is it that you were supposed to be
5 doing with regards to this interview?

6 A. Interviewing them for a print magazine.

7 Q. Do you know what the subject matter was
8 going to be of that interview?

9 A. How Mr. Jackson did not do anything
10 inappropriate with the family.

11 Q. Who is it who retained you to do that?

12 A. Marc Schaffel and Ronald Konitzer.

13 Q. Were you expecting to get paid for that
14 interview?

15 A. I did not get paid through them. I got paid
16 through a magazine.

17 Q. All right.

18 A. I was on staff at a magazine at the time.

19 Q. All right. Was this an article that would
20 appear in a magazine?

21 A. Uh-huh.

22 Q. Would it include photographs?

23 A. That was hoped for.

24 MS. SAGER: Object to the extent it's

25 unpublished information, Your Honor, since there was
26 not an interview published.

27 THE COURT: Sustained.

28 Q. BY MR. ZONEN: Did you ever meet with Janet 8249

1 Arvizo or her family?

2 MS. SAGER: Same objection, Your Honor.

3 THE COURT: Sustained.

4 Q. BY MR. ZONEN: Did you know who they were?

5 MS. SAGER: Same objection, Your Honor, to

6 the extent that nothing has been published on that
7 subject.

8 THE COURT: Sustained.

9 This is -- all objections are under the

10 shield law at this time?

11 MS. SAGER: Yes, Your Honor.

12 Q. BY MR. ZONEN: Did you have a conversation

13 with Ronald Konitzer as to whether or not that

14 interview would take place?

15 A. Yes.

16 Q. What did Mr. Konitzer tell you?

17 MS. SAGER: And, Your Honor, I'll only

18 object to the extent that if it includes information

19 that has not been published, that the witness should

20 not be required to reveal anything unpublished. To

21 the extent that there has been published information

22 on that, we are not objecting.

23 MR. ZONEN: And let me preface the question

24 with one other....

25 Q. Mr. Drew, did you appear on national

26 television and discuss this very topic?

27 A. I believe so.

28 Q. Was the national presentation through Court 8250

1 TV?

2 A. I believe so.

3 Q. Were you interviewed by someone by the name
4 of Diane Dimond?

5 A. I was.

6 Q. Have you ever seen that presentation?

7 A. Yes.

8 Q. And you did recognize yourself as well as
9 Miss Dimond?

10 A. Yes, I did.

11 Q. And did you discuss the subject matter of
12 this very interview on national television?

13 A. I believe so. I believe so. Again, I do so
14 many television interviews as part of my job, so
15 remembering what I said in each one is a little
16 difficult, but I believe so.

17 Q. All right. Did you, in fact, discuss the
18 reason why this interview was not going to take
19 place?

20 A. Yes.

21 Q. And what was the reason that the interview
22 would not take place?

23 MS. SAGER: And again, Your Honor, I will
24 only object to the extent that there's any
25 information that has not been published. But to the
26 extent Mr. Drew has revealed any portion of that on
27 national television, we're not objecting.

28 THE COURT: So can I take this as an 8251

1 instruction by yourself to your witness to only
2 divulge material that he's previously divulged on
3 television?

4 MS. SAGER: Yes, Your Honor. Thank you.

5 THE COURT: I'll accept that.

6 Q. BY MR. ZONEN: Can you answer the question?

7 A. I was told that the family was unavailable.

8 Q. And what does "unavailable" mean?

9 A. I was told that they had disappeared from
10 the ranch in the middle of the night.

11 Q. And who had told you that?

12 A. Ronald Konitzer.

13 Q. In fact, he used the word "escaped," didn't
14 he?

15 MS. SAGER: Same objection, Your Honor.

16 MR. MESEREAU: Objection; leading.

17 THE COURT: Overruled.

18 MS. SAGER: Your Honor, we would object to
19 the extent that the word -- whatever words were used
20 in the interview are the words that were used, and
21 any other words should be unpublished information.

22 MR. ZONEN: The objection was overruled?

23 THE COURT: Well, I'm to take that as an
24 instruction to the witness, because the objection
25 is -- it's not really an objection. She's saying,
26 "If something happened, I object. If not, I don't."

27 So I can't --

28 MS. SAGER: I understand, Your Honor. 8252

1 THE COURT: I could rule if it happened,
2 okay? And if not, no.
3 I think the better way is for you to
4 instruct your witness. And he knows, to the best of
5 his recollection, what he's said and what he hasn't
6 said. And then if there's an issue there, we'll
7 deal with it.
8 MS. SAGER: Thank you, Your Honor.
9 And I would instruct Mr. Drew not to answer
10 with respect to any words that were not used in his
11 discussion of what Mr. Konitzer said.
12 THE COURT: Do you have any idea what the
13 question was you're supposed to answer?
14 THE WITNESS: Could you rephrase, please?
15 Thank you.
16 Q. BY MR. ZONEN: What exactly did Ronald
17 Konitzer tell you about the disappearance of the
18 Arvizo family?
19 MS. SAGER: Again, Your Honor, with the same
20 instruction to the witness, only to answer as to
21 what he said on national television on that subject.
22 THE COURT: Can we just -- can you give him
23 that standing instruction that he would tell you or
24 indicate to you, or us, if we're getting into an
25 area he hasn't discussed, so you don't have to keep
26 interjecting yourself?
27 MS. SAGER: That's fine, Your Honor.
28 I don't know that Mr. Drew has a copy of the 8253

1 transcript of the interview in front of him. And
2 that's the only reason I'm issuing this same
3 objection.
4 THE COURT: Go ahead.
5 MR. ZONEN: All right.
6 MR. MESEREAU: Excuse me.
7 Your Honor, am I allowed to participate in
8 this area of objections? I'm not sure.
9 THE COURT: You're not sure?
10 MR. MESEREAU: Well, I think I can. But I
11 know you're trying to determine what's the scope of
12 the privilege.
13 I'm objecting to what he's saying for other
14 reasons. And I'm going to object on hearsay as far
15 as what he said on an interview.
16 MR. ZONEN: To the extent that they are
17 statements from the unindicted co-conspirator, Mr.
18 Konitzer.
19 THE COURT: Well, I think -- he's asking me a
20 question.
21 Yes, you can object, because what we're
22 testing here is what the jury will hear, of course,
23 and then what you can cross-examine on. So if you
24 object to something and it doesn't come in, there's
25 not an issue about cross-examination.
26 MR. MESEREAU: Okay. Thank you.
27 I'm objecting on hearsay.
28 MR. ZONEN: The answer is it's a statement 8254

1 in furtherance of a conspiracy from one of the
2 unindicted co-conspirators, Mr. Konitzer.
3 THE COURT: I don't know what the question
4 was now.
5 Q. BY MR. ZONEN: What specifically did he say
6 with regard to the disappearance of this family?
7 Would it be helpful if the witness was given
8 a transcript of the television program? We can
9 do that.
10 THE COURT: Well, you have to ask the witness
11 that question. That's the question that, would it
12 refresh your recollection if --
13 MR. ZONEN: I don't believe he's -- well --
14 THE WITNESS: It's a simple enough question,
15 I think.
16 I was told that they had disappeared; that
17 they couldn't keep them there anymore.
18 MR. MESEREAU: Objection. Objection.
19 THE WITNESS: And --
20 THE COURT: Just a moment.
21 Let him complete it.
22 THE WITNESS: And I believe the word
23 "escaped" was used, but again, I don't -- I can't
24 say word for word. But from -- the best of my
25 recollection, yes, I heard the word "escaped."
26 THE COURT: Okay. Now, I made you wait, but
27 you have an objection of hearsay.
28 MR. MESEREAU: I'm objecting to double 8255

1 hearsay. What the prosecutor is asking is, "What
2 did you say in an interview about what somebody else
3 said?"

4 MR. ZONEN: No, I did not.

5 THE COURT: He's asking what Mr. --

6 MR. ZONEN: Konitzer.

7 THE COURT: -- Konitzer said. That is

8 hearsay. Now, the question is, was it in the
9 furtherance of the conspiracy?

10 I don't see that it is, so I'll sustain the
11 objection.

12 MR. ZONEN: I ask to make an offer of proof.

13 THE COURT: Yes, you may.

14 MR. ZONEN: This was -- he was prepared to
15 do the interview of the family, the interview that
16 ultimately was done on the evening of the 19th into
17 the morning hours of the 20th by a different
18 interviewer, and this was going to be done in
19 furtherance of the promotion of the rebuttal film,
20 the portion that was to be contained in the Maury
21 Povich film. The family took off. That was in
22 conjunction with the movement off of Neverland Ranch
23 about that time.

24 It was Mr. Konitzer who was attempting to
25 arrange this, this filming, who then called him and
26 notified him that this filming would not take place
27 because the family had escaped. It's a reflection
28 of the state of mind of the co-conspirator; that the 8256

1 family acted in conformity with the testimony as we
2 presented it.
3 So the objection -- or the exception to
4 hearsay would be both a statement in furtherance of
5 conspiracy, and a statement consistent with the
6 state of mind of the co-conspirator.
7 THE COURT: I don't get that.
8 If the information is -- I mean, all of the
9 things you said could be in furtherance of the
10 conspiracy, except we get to this one statement,
11 which is, basically, "Where's the family?" "Well,
12 they escaped."
13 That is -- that's not in furtherance of the
14 conspiracy. If anything, it might reveal the
15 conspiracy.
16 MR. ZONEN: The fact that he says they
17 escaped, they disappeared in the middle of the
18 night, reflects, as to Mr. Konitzer, a state of mind
19 consistent with the fact that this family was being
20 kept there against their will, or at least as to the
21 mother. So that would be an admission on his part
22 that the family, in fact, was being kept against
23 their will.
24 And to the extent that that statement was
25 made during the course of the conspiracy, which it
26 was, it was mid-February, then that statement would
27 be an adoptive admission as to each of the
28 unindicted co-conspirators, including the defendant. 8257

1 THE COURT: All right. You just changed
2 horses in mid-stream.
3 MR. ZONEN: I sure did.
4 THE COURT: Do you want to address the --
5 MR. MESEREAU: Yes, Your Honor.
6 I mean, first of all, I think the Court has
7 an obligation to take into account the whole context
8 of the statement, when it was made, and the purpose
9 that apparently it was made for, in deciding whether
10 it might even be reasonably construed to be in
11 furtherance of a conspiracy.
12 THE COURT: I think he conceded suddenly that
13 it's not in furtherance. Now he's asking that it
14 come in as an admission, some sort of admission.
15 MR. MESEREAU: No, it's a hearsay statement
16 by someone who's never been charged with a crime,
17 who isn't in the courtroom. It's not an admission.
18 They didn't even charge any of these people, except
19 Mr. Jackson.
20 THE COURT: Don't -- wait, wait. Talk to me.
21 MR. MESEREAU: It's not an admission.
22 That's just grabbing for something that doesn't
23 exist. The only way it could possibly get in would
24 be an exception to the hearsay rule, which the Court
25 has, I think, found does not exist.
26 MR. ZONEN: If I could respond very briefly,
27 Your Honor.
28 Konitzer's state of mind certainly is an 8258

1 issue in this case as one of the unindicted
2 co-conspirators named specifically in the Indictment
3 returned by the grand jury. To that extent it would
4 be relevant.
5 But it is also admissible as either an
6 admission, given the fact that he is an unindicted
7 but named co-conspirator, or a declaration against
8 interest, specifically penal interest, if we were to
9 consider him as an unnamed party to this action.
10 MR. MESEREAU: Your Honor, again, he's not
11 here. He's not charged. He's not present. He's
12 not testifying. We can't cross-examine him. It's
13 not an admission. And it's clear hearsay. If it
14 can't come in under alleged co-conspirator hearsay
15 by someone who's never even been charged with a
16 conspiracy, it just can't come in.
17 THE COURT: Well -- just a minute. You know
18 that's not the law. The law is that statements by
19 co-conspirators, whether they're here or with us
20 today or not, can come in. That's not the issue.
21 That's -- he's -- you're not addressing the issue.
22 But just give me a moment to think here.
23 MR. MESEREAU: Your Honor, if there was a
24 co --
25 THE COURT: Just a moment, please.
26 Okay. I think what you were going to say
27 is, if it were a co-defendant and one co-defendant's
28 admission was attempted to be introduced in a trial 8259

1 of both of them, that it couldn't be introduced in
2 front of the jury. And I agree with you, if it were
3 any other crime but conspiracy.
4 MR. MESEREAU: But, Your Honor, I don't
5 believe it would come in as an admission. I believe
6 it would come in under co-conspirator hearsay or it
7 couldn't come in.
8 THE COURT: They either are trying to help
9 you or they can't hear.
10 (Laughter.)
11 MR. MESEREAU: Oh.
12 MR. ZONEN: I would object to the first of
13 those choices.
14 MR. MESEREAU: What I said to Your Honor is
15 in that event, it would not still come in as an
16 admission. It would have to come in as an exception
17 to the hearsay rule and be deemed by the Court
18 co-conspirator hearsay.
19 THE COURT: Well --
20 MR. ZONEN: Can I ask --
21 THE COURT: I'm going to --
22 MR. ZONEN: Can I ask this one question?
23 If, in fact, among the overt acts -- if, in
24 fact, among the overt acts would be acts of this
25 family leaving Neverland Ranch, and to the extent
26 that this person is one of the unindicted
27 co-conspirators, and the overt acts include their
28 efforts to return the family to the ranch and to 8260

1 return the family to this video presentation, then
2 his statement that they had fled the ranch and
3 escaped would certainly be statements in furtherance
4 of the conspiracy in terms of their efforts to renew
5 their activities to bring them back onto the ranch.
6 It would also be an admission on the part of
7 a co-conspirator to the extent of what they were
8 trying to do, and it would be a reflection of that
9 party's state of mind that that's what they wanted
10 to do, was keep them on the ranch until the point
11 that they were able to do this particular interview,
12 and thereafter to Brazil.

13 MR. MESEREAU: I think I said what I can
14 say, Your Honor. I don't think it can come in in
15 either event.

16 MR. ZONEN: And I'll submit as well.

17 MS. SAGER: And, Your Honor, we really don't
18 have a dog in this fight. I want to make sure the
19 record is clear that --

20 THE COURT: They can't hear you, so you have
21 to speak into the microphone.

22 MS. SAGER: We don't have a dog in this
23 fight, but I just want to make sure the record is
24 clear as to what this witness testified about was
25 not the video interview of the family. He was a
26 magazine reporter who was asking for an interview of
27 the family.

28 And I don't want it to be confused with some 8261

1 conspiracy theory about what was or wasn't done with
2 the video and what they were doing with that. That
3 is not what Mr. --

4 THE COURT: I'm not -- you have to have been
5 here for 49 days or so.

6 (Laughter.)

7 MS. SAGER: I understand, Your Honor.

8 THE COURT: That's not a problem.

9 MR. ZONEN: Where does that metaphor come
10 from? This is the second Los Angeles lawyer talking
11 about dogs and fights.

12 THE COURT: I don't know. I've used it
13 before. But after hearing someone chastised, I've
14 decided I'll never use it again.

15 I think it's admissible as to the state of
16 mind of the co-conspirator, so I'm going to allow
17 it.

18 MR. ZONEN: Thank you. I have no further
19 questions.

20 MR. MESEREAU: May I cross-examine, Your
21 Honor?

22 THE COURT: Yes.

23 MR. MESEREAU: Okay. Thank you.

24

25 CROSS-EXAMINATION

26 BY MR. MESEREAU:

27 Q. Good morning, Mr. Drew.

28 A. Good morning. How are you? 8262

1 Q. Fine, thank you.

2 You gave an interview to Lieutenant Klapakis
3 and another Santa Barbara sheriff named Robel on
4 August 4th, 2004, correct?

5 A. Yes.

6 Q. Do you know how long that interview was?

7 A. No. I didn't think it was that long, but it
8 was probably a lot longer than it was.

9 Q. You waived privileges when you gave that
10 interview, correct?

11 MS. SAGER: This is a question that's a
12 legal question, not a question for this witness as
13 to whether he waived privileges. He did not have
14 counsel. He had not been advised of rights.

15 THE COURT: Sustained.

16 Q. BY MR. MESEREAU: You gave that interview
17 freely and voluntarily, correct?

18 MS. SAGER: Same objections, Your Honor. He
19 was being served with a subpoena, had no counsel.

20 THE COURT: Just a moment here.

21 All right. As to the objection that he had
22 no counsel present, that's overruled.

23 The question pending, which you may answer,
24 is, did you give that interview freely and
25 voluntarily?

26 THE WITNESS: I guess. I didn't know it was
27 an interview, and I didn't know that it was being
28 documented in any way. 8263

1 Q. BY MR. MESEREAU: You were not served with a
2 subpoena for purposes of that interview, were you?

3 A. I don't know why I was served with a
4 subpoena. I just got it in the mail.

5 Q. You did not attend that interview because
6 you were subpoenaed to do so, right?

7 MR. ZONEN: Objection.

8 THE COURT: Maybe he doesn't know which
9 interview you're talking about.

10 THE WITNESS: I didn't think I was attending
11 any interview.

12 Q. BY MR. MESEREAU: Did you interview on
13 August 4th, 2004, with Lieutenant Klapakis and
14 Sergeant Robel of the Santa Barbara Sheriff's
15 Department?

16 A. I had a conversation with them.

17 Q. Where did the conversation take place?

18 A. Outside of my office.

19 Q. And did those two officers meet you outside
20 of your office?

21 A. They did.

22 Q. Did you speak to them?

23 A. I did.

24 Q. You were not subpoenaed to speak to them,
25 were you?

26 A. No.

27 Q. You spoke to them about facts concerning
28 this investigation, true? 8264

1 A. Yes.

2 Q. You told them you were a freelance
3 journalist who was currently working for US Weekly
4 Magazine, right?

5 A. That's not true. I've only worked as a
6 staffer at US Weekly.

7 Q. Did you tell them you were a journalist in
8 that interview?

9 A. Yes.

10 Q. Did you tell them you were doing some work
11 for US Weekly Magazine?

12 A. Yes.

13 Q. After you told them you were a journalist,
14 you continued to interview with them, right?

15 A. Yes.

16 Q. You gave them statements about Marc
17 Schaffel, true?

18 MS. SAGER: Your Honor, to the extent that
19 this is unpublished information that Mr. Drew has
20 gathered in the course of his job as a journalist,
21 I would still assert the shield law, which applies
22 unless he has published information. And the
23 statute and the Constitution specifically say,
24 "disseminated information to the public." And I'm
25 quoting.

26 So any discussion he may have had with law
27 enforcement officials would not fall within the
28 scope of published information as it's defined in 8265

1 Article I, Section 2(b).

2 MR. MESEREAU: If I may respond, Your Honor.

3 THE COURT: Yes.

4 MR. MESEREAU: He gave a free, voluntary

5 interview with two sheriffs. He knew they were

6 taking notes. He knew they were going to make a

7 report. He knew it was part of this investigation.

8 He knew that the reports were likely to be

9 circulated.

10 They have been circulated. They are not

11 under any particular special form of privilege.

12 They have been produced to the defense. They are

13 available to use at trial. He knew the information

14 he gave could be used in the investigation.

15 THE WITNESS: That's not true. I didn't

16 know any of that. I knew some of that.

17 MS. SAGER: Ian.

18 Actually, I was going to object, Your Honor,

19 but I was going to let Mr. Mesereau finish first.

20 THE WITNESS: Okay.

21 MR. MESEREAU: He gave extensive information

22 about Schaffel, Konitzer, his discussions with them,

23 his perceptions of them. And it's very clear from

24 the interview he knew exactly what he was doing.

25 MS. SAGER: And, Your Honor, I would point

26 out two things. One is Mr. Mesereau, with due

27 respect, has not established any of the things that

28 he just said as to what Mr. Drew knew or didn't 8266

1 know. He's merely asserted them.
2 Second, we're talking about a waiver of a
3 constitutional right, First Amendment right and
4 state constitutional right. And I don't think Mr.
5 Mesereau has established either that Mr. Drew
6 understood or had any reason to know when he was in
7 that conversation that there was later going to be a
8 position taken that, by talking to the police
9 officers at all, that he was waiving his
10 constitutional rights.
11 THE COURT: Are there any cases on this
12 scenario where a person talks freely to the law
13 enforcement and then claims the shield law in court?
14 MS. SAGER: I don't know of a case in
15 California, Your Honor, that deals with this
16 particular issue.
17 The Playboy case, which we cited in our
18 papers, does deal with the difference between
19 revealing information publicly and any other
20 information that may be related that's not revealed
21 publicly, and they draw a very strict line. The
22 language of Article I, 2(b), talks about information
23 that is disseminated to the public. Everything else
24 is defined as unpublished information.
25 THE COURT: What about -- I didn't read the
26 Playboy case. What was the disclosure in the
27 Playboy case?
28 MS. SAGER: In the Playboy case, there was 8267

1 an interview published with Cheech and Chong that
2 had some information that they had given during the
3 course of an interview with a Playboy --

4 THE COURT: But nobody understood what they
5 said.

6 (Laughter.)

7 MS. SAGER: Everybody bought it for the
8 article, too.

9 (Laughter.)

10 MS. SAGER: The argument was made, in
11 subpoenaing all of the information from Playboy,
12 that they had already revealed, in fact, what was
13 said in the interview because they wrote an article
14 about it.

15 And the Court of Appeal in the Second
16 Appellate District said only what is actually
17 revealed in the article disseminated to the public
18 has been revealed, even though there were
19 discussions with Mr. Cheech and Mr. Chong, even
20 though there was some information published.

21 THE COURT: Are you familiar with that case,
22 Counsel.

23 MR. MESEREAU: I am not, Your Honor. But I
24 would -- I haven't completed my examination of him
25 yet, so I don't think -- I think it's rather
26 premature to conclude we can't establish that he
27 didn't know what he was doing or didn't know he
28 was -- 8268

1 THE COURT: The question, though, is what
2 questions he has to answer right now while you're
3 trying to complete your examination. That's the
4 problem. And --

5 MR. MESEREAU: Well, Your Honor, if I can't
6 cross-examine him on the issues he wants to testify
7 on direct about, then I don't think he should be
8 allowed to testify as a witness.

9 MS. SAGER: And, Your Honor, I'd only point
10 out that we did not brief the issue of waiver,
11 because it did not come up, but there's certainly a
12 long line of cases about the waiver of
13 constitutional rights needs to be knowing, not
14 simply a voluntary conversation, but a knowing
15 waiver of your rights.

16 And if Mr. Drew is asked, I expect he could
17 answer the question as to whether he knew and
18 understood that, by any conversation he had with
19 these officers, he was waiving all rights he might
20 have under the California shield law and the
21 Constitution.

22 THE WITNESS: Can I actually say, I was told
23 by the officers and I actually had the understanding
24 that --

25 THE COURT: Just a moment.

26 THE WITNESS: All right.

27 THE COURT: The way we have to do this is we
28 rely on your attorney to help -- 8269

1 THE WITNESS: Okay.

2 THE COURT: -- what she wants to bring out.

3 You -- that's the -- you have a very competent

4 attorney, so I think you should --

5 MS. SAGER: Thank you, Your Honor.

6 THE WITNESS: Thank you.

7 MS. SAGER: And I just would add, Your

8 Honor, that I don't disagree with Mr. Mesereau about

9 whether Mr. Drew should have to testify at all. I

10 do think getting into cross-examination will lead

11 into areas that are covered by the privilege, which

12 is the reason we put that in our brief. It is a

13 problem when you have reporters called as witnesses,

14 because even if one side tries to limit what they're

15 asking to published information, it is inevitable

16 the cross-examiner will attempt to get into other

17 areas that are not published and that do delve into

18 reporters' constitutionally protected information.

19 MR. MESEREAU: If I may, Your Honor.

20 THE COURT: Yes.

21 MR. MESEREAU: There is information in the

22 police reports that suggests that it was the

23 conclusion of the investigating sheriffs that Mr.

24 Drew has been a business associate of Mr. Schaffel.

25 The Court already knows, because it's in

26 evidence, that he did conduct an interview of Debbie

27 Rowe at Mr. Schaffel's residence, presumably at the

28 behest of Mr. Schaffel. And there is considerable 8270

1 evidence in the police reports that he has
2 relationships with Konitzer and others.
3 Now, if he's going to be called to testify
4 to what Mr. Konitzer says to him, it would terribly
5 prejudice our ability to defend if we couldn't
6 extensively cross-examine on veracity, on bias, on a
7 motive to make a statement for a particular reason,
8 and also his relationship with these people. If we
9 can't do that, he should be precluded from
10 testifying.

11 MS. SAGER: And the problem again, Your
12 Honor, is journalists have relationships with a
13 number of people. They may be getting information
14 from a lot of different sources. And the fact that
15 they get information from people that they may later
16 want to publish, that's something that is
17 tremendously protected under the First Amendment.
18 And to allow counsel to cross-examine into
19 what information he may or may not have gotten from
20 people who may have been confidential sources, may
21 have been on-the-record sources but were not ever
22 published, really opens up the privilege widely, and
23 for something that in this case, frankly, is a
24 tangential issue.

25 And there's some question about whether this
26 particular statement has any relevance here, given
27 that I don't believe it's disputed that the family
28 left when they left, why they left. And the 8271

1 circumstances of that, are not within this witness's
2 personal knowledge.
3 So what his impressions were, what he
4 interpreted the remark to mean is not something that
5 would be admissible. So the remark itself that they
6 left is really not all that important compared to
7 the constitutional issues.
8 THE COURT: Actually, the substance of what
9 he said is important. That's not a good argument.
10 But --
11 MR. MESEREAU: If the Court will permit,
12 Your Honor, could we have a few minutes to try to
13 research that case? Because I'm not --
14 THE COURT: The Playboy case?
15 MR. MESEREAU: Yes.
16 THE COURT: Yeah, it wouldn't hurt for me to
17 look at it.
18 MR. ZONEN: Do we need the actual evidence
19 from that case?
20 THE COURT: Let's --
21 MS. SAGER: As I said, Your Honor, we did
22 not brief the issue of waiver extensively, so we're
23 happy to do that for the Court if that's going to be
24 an issue that's --
25 THE COURT: That might not be necessary if
26 each of us have a chance to look at the case.
27 Let's see. The next recess is scheduled
28 for -- I don't want to make the same mistake I made 8272

1 earlier, so why don't we just take our 11:30 recess,
2 and then everybody who doesn't have to read cases
3 can eat. Okay? And we'll come back at the end of
4 our 11:30 recess.

5 (Recess taken.)

6 THE COURT: All right. You wanted time to
7 look at that case?

8 MR. MESEREAU: I did look at it, Your Honor.

9 It deals primarily with civil matters, obviously.

10 And I think --

11 THE BAILIFF: Can you turn your microphone
12 on, please?

13 MR. MESEREAU: Pardon me.

14 I did look at the case, Your Honor, and I

15 believe it clearly deals with civil matters. I

16 think what the Court in our discussion has

17 identified are really three issues to be analyzed.

18 The Court did analyze the first issue, and

19 that had to do with the question of whether this was

20 admissible or not. We did do a little bit of

21 research. I don't know if the Court will allow me

22 to even address that again, or if you would, I would

23 refer the Court to a local case called Saling, which

24 holds that, "Although it has been held that

25 statements which merely narrate past events are not

26 to be deemed to be made in furtherance of a

27 conspiracy..." and then it does say that the Court

28 has to do a balancing analysis. The cite is 8273

1 7 Cal.3d at 852.

2 So we would certainly renew our objection to
3 the admission of the statement the witness
4 purportedly wants to testify to.

5 Number two, the question is, does the shield
6 law apply? And if the shield law is deemed by the
7 Court to apply, I believe you still have to then do
8 another balancing test to determine, in a criminal
9 trial, if the defendant, to get a fair trial, has a
10 right to crack what is being shielded.

11 And I would refer the Court to the case of
12 Delaney vs. Superior Court, 50 Cal.3d 785. It's a
13 1990 case. And you have a holding that, "To
14 overcome a prima facie showing by a newsperson that
15 he is entitled to withhold information under the
16 shield law, a criminal defendant must show a
17 reasonable possibility the information will
18 materially assist his defense. A criminal defendant
19 is not required to show that the information goes to
20 the heart of his case."

21 Now, I think the prosecutor has basically
22 admitted that he thinks the purported testimony goes
23 to the heart of his conspiracy allegation. He
24 believes it goes to the heart of his conspiracy
25 allegation as it appears in the Indictment and as it
26 appears in the alleged overt acts in the Indictment,
27 according to the prosecutor.

28 The question we have, or the question for 8274

1 the Court is, if he's allowed to bring in this
2 hearsay statement, or I think the Court considered
3 it an admission as well, what are we allowed to do
4 if we want to cross-examine him?
5 And I think it's pretty clear that the
6 witness and his attorney are attempting to preclude
7 any type of examination into his relationships with
8 the people he wants to testify about, relationships
9 which he identified and articulated to two police
10 officers. And I renew my claim that we would be
11 severely hamstrung and prejudiced in our ability to
12 examine him for the truth of what he is saying and
13 his motives for saying what he's saying if we
14 couldn't go into that.
15 So where we are right now, Your Honor, is, I
16 think there's an argument that it's shielded based
17 on the case the Court read, but there is a far
18 stronger argument that the defense must go into that
19 information if the witness is allowed to testify.
20 So perhaps the better solution, weighing all
21 of these issues, is disqualify him from testifying,
22 and then there is no argument that the defendant is
23 being unfairly hamstrung in his ability to confront
24 and cross-examine.
25 And I don't think -- one thing I will say to
26 the Court, in his interview to the police, it
27 appears as if he's giving all of the information.
28 As I understand, a lot of these cases dealing with 8275

1 the shield law, they have to deal with information
2 gathered by the reporter that the reporter doesn't
3 want to disclose.

4 Here, you've got police interviews where
5 basically the police appear to be saying nothing,
6 giving him no information at all, and he is
7 voluntarily allowing himself to be interviewed, near
8 his place of business, about Schaffel, about
9 Konitzer, et cetera, about the Arvizos.

10 THE COURT: But, see, that's the material
11 he's gathered. It's not -- he wasn't gathering from
12 the police, or if he tried, he apparently failed.
13 He was -- he had already gathered his information,
14 and he was telling the police what he'd gathered.

15 MR. MESEREAU: Uh-huh.

16 THE COURT: And --

17 MR. MESEREAU: But it does involve more than
18 that, Your Honor. He admitted to the police working
19 out of Schaffel's home for weeks, for example.
20 Things like that are part of that interview and are
21 part of the information his lawyer wants to shield.
22 And it would just -- it would just eviscerate our
23 ability to probe and test for credibility on
24 cross-examination if we couldn't go into those
25 relationships and that information.

26 THE COURT: Well, under Delaney, you have to
27 show -- the defense has the burden of showing that
28 the information, the unpublished information that he 8276

1 has, would materially assist the defense. And --

2 MR. MESEREAU: As I just said, Your Honor, I
3 believe the holding is just if we show a reasonable
4 possibility it will help us to assist the trier of
5 fact in determining whether this witness should be
6 believed or whether this witness has a motive to lie
7 or a motive to gain financially by appearing in this
8 trial, by saying what he's saying, given his past
9 associations, his past admissions and statements to
10 various people. If we can't go into that, we are
11 severely prejudiced.

12 THE COURT: Well, what is the information
13 that you claim that he has that would materially
14 assist the defense? And it says you must make a
15 specific showing that the nondisclosure would create
16 a substantial probability of injury to the
17 defendant's right to a fair trial. What is that
18 information that you think is that valuable?

19 MR. MESEREAU: His relationships with
20 Konitzer; when he met him; how many times he spoke
21 to him. Did he have any financial connection with
22 Konitzer? To his knowledge, was Konitzer involved
23 with Schaffel when he was involved with Schaffel?
24 What business relationship or financial
25 relationships did he have with these two people?
26 Why was he trying to get information from them?
27 What did he intend to do with the information? When
28 did he last talk to them? Did he, in fact, talk to 8277

1 the police voluntarily and give information to try
2 and be part of this case, because he is a journalist
3 and he can profit that way?
4 I mean, there are lots of questions that I
5 would want to go into about his relationship --
6 THE COURT: There's lots of questions, but
7 the -- what is the information you would get that
8 would -- it's not the questions that prove the
9 point. It's the answers.
10 MR. MESEREAU: Yes. Yes. Well --
11 THE COURT: So what are you offering -- what
12 are you proffering to me in the way of information
13 he has? Not questions you have.
14 MR. MESEREAU: He's had a falling-out with
15 Schaffel, who he had a business relationship with.
16 He worked out of his house for three weeks. He saw
17 a contract at Schaffel's saying Schaffel was going
18 make millions of dollars. He was not allowed to
19 participate in that. He had a falling-out with
20 Konitzer. Is he now trying to basically assist the
21 prosecution in incriminating Konitzer?
22 He has a lot of relationships with these two
23 characters that I would think we have to be able to
24 go into to show his motive to lie.
25 THE COURT: You're making an offer of proof
26 that those facts are -- if he were forced to
27 testify, he would say that he had not been able to
28 enter into multi-million dollar deals with them, et 8278

1 cetera, et cetera?

2 MR. MESEREAU: Well, he may deny it. But if
3 he does, I would explore it further and show he's
4 not telling the truth.

5 THE COURT: Okay. Well, what I want to know
6 is what you know he has to say, not what you suspect
7 from your questions.

8 MR. MESEREAU: Well, Your Honor, I've never
9 interviewed him.

10 THE COURT: You have the police interview.

11 MR. MESEREAU: Yes, I do.

12 THE COURT: That would be of some
13 assistance, I would think.

14 MR. MESEREAU: Yes, Your Honor. He worked
15 out of Schaffel's residence for approximately three
16 weeks. He learned that Schaffel was trying to enter
17 into a contract with FOX for \$7.5 million regarding
18 the Rowe interview. He conducted the Rowe
19 interview. He told the police the Rowe interview
20 was not scripted. He apparently didn't make any
21 money off of the Rowe interview and apparently
22 wanted to. He had -- he met Konitzer, who was also
23 involved in the Rowe interview. He had a
24 relationship with Konitzer. They apparently talked
25 on a number of occasions. He was in Florida with
26 these individuals.

27 THE COURT: I think what we should do is --
28 you know, some of those things may not be subject to 8279

1 the shield law. Some may. The District Attorney
2 has finished his examination. I've made the ruling,
3 which I'm not changing, on the state of mind that --
4 so now the question arises under Delaney.
5 So, in order to find out where we really are
6 under Delaney, I think you have to ask the witness
7 some questions, and we have to see which ones he
8 answered and which ones he claims are unpublished
9 and he has a privilege, and I'll have to look at the
10 case from that standpoint.
11 MR. MESEREAU: Okay.
12 MS. SAGER: And the only thing I would like
13 to add, Your Honor, is under the Delaney test, the
14 test that --
15 THE COURT: You need to --
16 MS. SAGER: I'm sorry, Your Honor. I'm not
17 used to using these microphones.
18 Under the Delaney test, it's not only the
19 threshold test, which is what Mr. Mesereau
20 presented, of whether the information sought is
21 reasonably likely to materially assist the defense.
22 That's simply the threshold.
23 Assume he gets past that. Then the Court
24 engages in a balancing of all the other factors in
25 Delaney. It's not simply enough that he meet that
26 one test.
27 THE COURT: That's right. Then we look to
28 see the balance, I agree. 8280

1 So you may question.

2 MR. MESEREAU: Thank you, Your Honor.

3 Q. Mr. Drew, do you know someone named Marc
4 Schaffel?

5 A. I did.

6 Q. You did?

7 A. Uh-huh.

8 Q. When did you first meet Marc Schaffel?

9 MS. SAGER: Your Honor, I'd object to the
10 extent that reveals unpublished information. And
11 also point out, Your Honor, that really has very
12 little relevance to the one statement that Mr. Drew
13 has been asked about by the prosecution that was
14 published. You're now talking about an entirely
15 different individual, not even the individual that
16 he has spoken to that he talked about in his
17 interview.

18 MR. MESEREAU: With all due respect to
19 counsel, that's not true, Your Honor. I will link
20 the relationship he has with Schaffel and Konitzer
21 to the impeachment I'm trying to demonstrate. But I
22 could ask the questions on Konitzer, and I'll see if
23 he's going to assert the privilege to those. Maybe
24 that would narrow it. Shall I do that, Your Honor?

25 THE COURT: Let me think. He's already
26 testified that the -- that he was working for
27 Konitzer when he did the interview, right?

28 MS. SAGER: Actually, I don't believe that's 8281

1 correct. I believe he testified he was working for
2 a magazine and the interview was set up through Mr.
3 Konitzer and Mr. Schaffel, not that he was working
4 for them.

5 And in fact, I think he testified -- and
6 counsel will correct me if I'm wrong. I believe he
7 was asked was he paid anything by them, and he said
8 no. Nor was he working for Mr. Jackson at any
9 point.

10 THE COURT: All right. For purposes of where
11 we are in the hearing, I'll sustain the shield
12 objection on that question.

13 Q. BY MR. MESEREAU: Do you know someone named
14 Ronald Konitzer?

15 A. Yes.

16 Q. And how long have you known Ronald Konitzer?

17 MS. SAGER: Same objection, Your Honor, to
18 the extent that that's not been published, the
19 extent of the length of their relationship or
20 knowledge. Simply the fact that he knows him has
21 been published.

22 THE COURT: Well, I think I need you to be
23 more clear in your objection. You're saying "to the
24 extent that that has not been published." I mean,
25 you have to make a claim that that's not been
26 published; that, "Your Honor, that has not been
27 published," so I know that. I don't really know
28 that, the way you're stating it. 8282

1 MS. SAGER: I apologize, Your Honor, and the
2 only reason I'm couching it the way I am is because
3 Mr. Mesereau seems to believe that some things are
4 publications which I don't agree with and the Court
5 hasn't ruled on. There is an interview that does
6 not contain the information that Mr. Mesereau is
7 asking about and that's the publication that we're
8 looking at. That information is not published, as
9 far as I'm aware.

10 THE COURT: Well, I don't think you can limit
11 it to that interview. I mean, if he's published it
12 anywhere, in any magazine, or any news, or T.V.,
13 or -- you know, the definition really doesn't even
14 involve media. If it's -- I guess if it's
15 dissemination to the public, he could do it
16 personally walking around the mall over there.
17 So we have to -- when you claim he's being
18 asked to reveal something that he hasn't published,
19 it has to be he hasn't published it. Not that he
20 didn't talk about it in the interview with the --
21 which interview are we talking about?

22 MS. SAGER: The Court TV interview, Your
23 Honor.

24 THE COURT: The Court TV interview that he
25 was interviewed on. That is not the only place that
26 he could have published. He may have published it
27 nowhere else, but we need to be clear. We aren't
28 limiting this to that. 8283

1 MS. SAGER: I understand, Your Honor. And
2 so my objection is that Mr. Mesereau is calling for
3 information which is unpublished within the meaning
4 of the shield law.

5 THE COURT: All right. For purposes of this
6 hearing right now at this point, just to see where
7 we're going, I will sustain the claim under the
8 shield law.

9 Q. BY MR. MESEREAU: When did you first meet
10 Ronald Konitzer?

11 MS. SAGER: Same objection, Your Honor.
12 That's unpublished information.

13 THE COURT: All right. For purposes of this
14 hearing right now, I'll sustain that claim under the
15 shield law.

16 Q. BY MR. MESEREAU: Where did you first meet
17 Ronald Konitzer?

18 MS. SAGER: Same objection, Your Honor.

19 THE COURT: All right. And I'll make the
20 same ruling for purposes of this hearing.

21 Q. BY MR. MESEREAU: When you first met Ronald
22 Konitzer, who else was present?

23 MS. SAGER: Same objection, Your Honor.

24 THE COURT: I'll sustain the objection under
25 the shield law.

26 Q. BY MR. MESEREAU: When you first met Ronald
27 Konitzer, in your mind, what was the purpose of the
28 meeting? 8284

1 MS. SAGER: Same objection, Your Honor.

2 Also that Mr. Drew's state of mind is not at issue
3 here.

4 MR. MESEREAU: I think it is on cross, Your
5 Honor.

6 THE COURT: I'll sustain it under the shield
7 law.

8 Q. BY MR. MESEREAU: How many times have you
9 met with Ronald Konitzer?

10 MS. SAGER: Same objection, Your Honor, as
11 to unpublished information.

12 THE COURT: I'll sustain the objection under
13 the shield law.

14 Q. BY MR. MESEREAU: Have you ever discussed
15 Michael Jackson with Ronald Konitzer?

16 MS. SAGER: And I would object to the extent
17 that it seeks information that has not been
18 published.

19 THE COURT: That's an insufficient objection.
20 I'll overrule it.

21 MS. SAGER: I understand, and the only
22 reason I'm couching it that way is the question, as
23 phrased, is ambiguous. But I'll object to the
24 question as calling for information that is not
25 published.

26 THE COURT: All right. I'll sustain that
27 under the shield law for this hearing.

28 Q. BY MR. MESEREAU: Have you ever had a 8285

1 discussion with Ronald Konitzer about the
2 possibility of interviewing the Arvizo family?

3 A. Yes.

4 Q. When did that discussion take place?

5 A. It took place the week after the Debbie Rowe
6 interview.

7 Q. When was the Debbie Rowe interview?

8 A. I believe, from my recollection, it was
9 March of 2003.

10 Q. Were you at the Debbie Rowe interview?

11 A. Yes, I did the Debbie Rowe interview.

12 Q. Are you the person who asked Debbie Rowe
13 questions in that interview?

14 A. Yes.

15 Q. You've told the police that interview was
16 not scripted, correct?

17 MS. SAGER: Your Honor, and I'd again object
18 that this is not published information.

19 MR. ZONEN: And I would also interject an
20 objection that it exceeds the scope of the direct
21 examination.

22 THE BAILIFF: You guys have to use the
23 microphone.

24 MR. ZONEN: I would object that it exceeds
25 the scope of the direct examination.

26 THE COURT: Sustained.

27 Q. BY MR. MESEREAU: Was the Debbie Rowe
28 interview scripted? 8286

1 MS. SAGER: Same --
2 MR. ZONEN: Objection; exceeds the scope of
3 the direct examination.
4 MS. SAGER: Also unpublished, Your Honor.
5 THE COURT: Sustained on both grounds.
6 Q. BY MR. MESEREAU: Was Ronald Konitzer at the
7 Debbie Rowe interview?
8 MS. SAGER: Objection, Your Honor. Calls
9 for unpublished information.
10 THE COURT: Sustained under the shield law.
11 Q. BY MR. MESEREAU: Now, you said, in response
12 to the prosecutor's questions, that Mr. Konitzer
13 referred to the Arvizo family leaving Neverland
14 Ranch, right?
15 A. Yes.
16 Q. And your first response to the prosecutor's
17 question was that Konitzer told you that they had
18 disappeared from Neverland Ranch, correct?
19 A. Yes.
20 Q. After being further asked questions by the
21 prosecutor, you said that Konitzer had used the word
22 "escape," right?
23 A. I said I believed he had used the word
24 "escape." I remembered it.
25 Q. You didn't use the word "escape" when you
26 first responded to the prosecutor's question about
27 what Mr. Konitzer had said, right?
28 A. I think I did. I think it was all within 8287

1 the same sentence, from my recollection.
2 Q. You said "disappear," did you not?
3 A. That was part of it, too.
4 Q. Now, how long did your discussion with
5 Konitzer take place on that particular occasion?
6 MS. SAGER: Objection, Your Honor. Calls
7 for unpublished information.
8 THE COURT: All right. Sustained under the
9 shield law.
10 Q. BY MR. MESEREAU: Were other things said by
11 Mr. Konitzer to you on the occasion when you claim
12 he made that statement?
13 MS. SAGER: Same objection, Your Honor.
14 Calls for unpublished information.
15 THE COURT: Sustained.
16 Q. BY MR. MESEREAU: How long did that
17 discussion last?
18 MS. SAGER: Same objection, Your Honor.
19 THE COURT: Sustained.
20 Q. BY MR. MESEREAU: Did you say something to
21 Mr. Konitzer in that discussion?
22 MS. SAGER: And I'll object, Your Honor, to
23 the extent that it calls for information that has
24 not been published. It was one word, I believe, Mr.
25 Drew has published, which I'll let him answer.
26 THE COURT: All right. Answer the one, the
27 word, following your attorney's instructions.
28 MS. SAGER: If you recall. 8288

1 THE WITNESS: I don't. I don't remember.
2 Q. BY MR. MESEREAU: Where did the discussion
3 take place?
4 MS. SAGER: Same objection, Your Honor.
5 Calls for unpublished information.
6 THE COURT: Sustained.
7 Q. BY MR. MESEREAU: Who else was there with
8 you and Konitzer?
9 MS. SAGER: Same objection, Your Honor.
10 Also assumes facts not in evidence.
11 THE COURT: Under the shield law objection,
12 I'll sustain the objection.
13 Q. BY MR. MESEREAU: Was anyone else there with
14 you and Mr. Konitzer?
15 MS. SAGER: Calls for unpublished
16 information, Your Honor.
17 THE COURT: Sustained.
18 Q. BY MR. MESEREAU: Did you arrange for the
19 discussion where you claim Mr. Konitzer made that
20 statement?
21 MS. SAGER: I believe it's vague, Your
22 Honor, but it's information that is published, so
23 I'll let the witness answer, if he recalls.
24 THE WITNESS: Yes, I was trying to get an
25 interview, so I think I -- I think I made the phone
26 call, because I'm pretty dogged about that usually.
27 Q. BY MR. MESEREAU: Where were you when you
28 made the phone call? 8289

1 MS. SAGER: Calls for unpublished

2 information, Your Honor.

3 THE COURT: Sustained.

4 Q. BY MR. MESEREAU: Did you call Konitzer's

5 number?

6 MS. SAGER: Same objection, Your Honor.

7 THE COURT: Sustained.

8 MR. MESEREAU: Your Honor, I believe at this

9 point it's pretty clear I wouldn't be able to

10 cross-examine the witness on any of this; we would

11 be prejudiced. And I believe, under the Delaney

12 case, the witness should be disqualified from

13 testifying. I'm not being allowed to cross-examine

14 on anything regarding the bona fides of what he said

15 and in what context it was said, who was there,

16 where it took place.

17 And again, I would refer the Court to the

18 holding in the Delaney case. All we have to show is

19 a reasonable possibility the information will

20 materially assist the defense. And the material

21 assistance would be in examining the veracity, the

22 motives, the bias of this witness.

23 MS. SAGER: And, Your Honor, I believe under

24 the Foss case, that disqualification of the witness

25 is the appropriate measure to take rather than

26 allowing any counsel to get into information that

27 clearly is protected by the shield law, so that even

28 published information should not be presented if 8290

1 then, to allow cross-examination, would delve into
2 constitutionally protected information.
3 THE COURT: Mr. Drew?
4 THE WITNESS: Uh-huh.
5 THE COURT: I'm looking at the testimony
6 you've already given. What I want to do is read to
7 you what you said about the -- just that one
8 sentence is all we're talking about. I want to read
9 to you that sentence, and I want to ask you a couple
10 of questions about why you said that sentence.
11 THE WITNESS: Okay.
12 THE COURT: But to do that, I want to read it
13 to you, so I'm going to ask you to listen to this:
14 The question by Mr. Zonen was, "What
15 specifically did he say with regard to the
16 disappearance of this family? "Would it be helpful
17 if the witness was given a transcript of the
18 television program? We can do that."
19 I say something, and then Mr. Zonen says
20 something.
21 And then Mr. Zonen says, "Well," as a
22 question mark, and you say, "It's a simple enough
23 question, I think. I was told that they had
24 disappeared, that they couldn't keep them there
25 anymore."
26 There's some objections.
27 And you say, "And I believe the word
28 'escaped' was used. But again, I don't -- I can't 8291

1 say word for word. But from the best of my
2 recollection, yes, I heard the word 'escape.'"
3 First of all, what you've already answered,
4 does that accurately reflect your recollection of
5 that conversation?

6 THE WITNESS: Uh-huh. Yes.

7 THE COURT: What is your -- if you can answer
8 this, what is the failure of your recollection about
9 the word "escaped"?

10 THE WITNESS: No, it's to the best of my
11 recollection. When I was talking to Mr. Konitzer, I
12 was simply trying to get -- I was on a deadline
13 trying to get an article done, so I wasn't paying
14 attention word for word, knowing that in a trial two
15 years later I would have to remember each part of
16 it. I remember the tone of his conversation more
17 than I remember even the exact words.

18 THE COURT: Okay. Thanks.

19 Mr. Mesereau, is there anything in the
20 police reports that you have that you would like to
21 represent to me --

22 MR. MESEREAU: First of all, Your Honor, as
23 the Court knows, in many of my prior
24 cross-examinations of witnesses, I have asked them
25 when they -- excuse me, if they ever met with any
26 representative of the Santa Barbara Sheriff's
27 Department; who initiated the meeting; what was
28 said; who said what; did the sheriffs say anything 8292

1 to you about the case?

2 And the reasons are obvious. We want to
3 establish if, in fact, the prosecution or its agents
4 have tried to infect any witness with information of
5 a specific nature or give them a perspective on the
6 case or try and indoctrinate them in some way. We
7 also want to establish if the witnesses have said
8 anything to the sheriffs which suggests a desire to
9 be involved in this case or a desire to --

10 THE COURT: I think you didn't let me finish
11 my question.

12 MR. MESEREAU: Oh. I'm sorry. Pardon me.

13 THE COURT: The question I wanted to ask, is
14 there anything in the police reports that he said in
15 the interview with the sheriff's department or any
16 law enforcement people that you want to show me or
17 advise me of? You know, as opposed to the questions
18 that you would ask, any information contained
19 therein that you believe is, you know, material that
20 would --

21 MR. MESEREAU: Yes, Your Honor. I mean,
22 first of all --

23 THE COURT: -- materially assist your defense
24 if he were to testify to it?

25 MR. MESEREAU: Yes, Your Honor. There is
26 the business relationship between this witness and
27 Schaffel and Konitzer, as I would like to establish,
28 is that he had a relationship with them. He was 8293

1 involved in their efforts to make money off of
2 Michael Jackson. The --
3 THE COURT: That's -- just to be clear now,
4 that's in the police report?
5 MR. MESEREAU: Yes, Your Honor. He
6 conducted the Debbie Rowe interview. He was working
7 out of Schaffel's residence. He was promised he
8 could interview the Arvizo family. He had a
9 financial interest in working with Schaffel and
10 Konitzer. He then was apparently told, "You're not
11 going to be interviewing the Arvizo family because
12 they left Neverland."
13 And then the question is, what kind of
14 relationship did he continue to have with them?
15 What money did he expect to make? Who was supposed
16 to pay him for doing all of this? Did he think he
17 was going to be involved in the FOX contract? He
18 did tell the sheriffs that he saw, in fact, a FOX
19 contract at Schaffel's residence during the
20 approximately three-week period of time that he
21 worked out of Mr. Schaffel's residence.
22 And the question would be, why did he look
23 at the contract? How did he know it said \$7.5
24 million from FOX? What interest did he think he
25 had? Has he had a falling-out with Konitzer? When
26 did he last talk to any of these people?
27 He did not obtain this so-called quote in
28 isolation, and he didn't obtain it in a casual, 8294

1 unexpected occurrence or meeting. He obtained it,
2 if he did, within the context of an ongoing business
3 relationship with Konitzer and Schaffel, who the
4 prosecution allege are unindicted co-conspirators.
5 And the motives for coming forward and making this
6 allegation on T.V. and in court are fertile ground
7 for cross-examination where the scope of
8 cross-examination is very broad to show any type of
9 financial motive, financial bias, or a bias to say
10 anything that hurts his former co-business partners,
11 which in fact they were. So we would be severely
12 hamstrung if we could not go into these
13 relationships and these motivations.
14 Now, he told the police that when he
15 interviewed Debbie Rowe, he was working out of
16 Schaffel's residence for approximately three weeks.
17 He said that during that period of time, he saw the
18 FOX contract. He just told the Court that when he
19 got this information from Konitzer, he had a
20 deadline. How did that deadline relate to why he
21 was talking to Konitzer to begin with? What project
22 were they still involved in, if any?
23 And clearly his police interview, which was
24 conducted by him, as I said before, on a voluntary
25 basis, talks about how he met these characters, how
26 he stayed in contact with them, where he called them
27 from, how the interview with the Arvizos he thought
28 he was going to do related to the interview with 8295

1 Debbie Rowe. It's all part of the same package.

2 And, Your Honor, there are tapes where he

3 and Debbie Rowe complain about Schaffel and

4 Konitzer. There is the issue of his falling-out

5 with them. It's all interconnected.

6 THE COURT: Okay. Do you want to be heard,

7 Mr. Zonen?

8 MR. ZONEN: Your Honor, the police report in

9 this matter is four pages of text, and I think it

10 would be appropriate for the Court to review it, and

11 I would invite the Court to review it to make the

12 determination as to whether -- would you like me at

13 the podium?

14 THE COURT: Yes.

15 MR. ZONEN: The Court specifically made the

16 inquiry as to whether or not there's information

17 contained in the police report as might justify

18 extensive cross-examination of this witness with

19 regards to information given by the witness to

20 detectives in the course of that interview.

21 Rather than debate what is and what isn't,

22 it's a very brief report. It's only four pages of

23 large script. And I would ask that the Court read

24 it to make a determination as to whether or not that

25 would assist the Court in its judgment.

26 Once again, the prosecution is offering one

27 sentence in this case. It's a conversation that

28 took place between this witness and another person, 8296

1 one of the unindicted co-conspirators, to the extent
2 this that person said to this witness, "They've
3 left," and the words of how they left. It's
4 effectively one or two sentences.
5 I do not believe that that warrants and
6 justifies extensive cross-examination on the
7 relationships and interrelationships between each of
8 the five unindicted co-conspirators and this witness
9 and any of the co-conspirators among themselves at
10 any point in history. I also don't believe it
11 justifies an examination into his involvement in the
12 interview with Debbie Rowe, which was an entirely
13 separate interview and separate people involved.
14 As to the question of what he can be
15 cross-examined on in the course of the interview
16 with the -- the "interview" -- the two-sentence
17 conversation with Mr. Konitzer, I think that he can
18 be cross-examined on information that would shed
19 light on what was going on at that time and the
20 accuracy of that statement, and it is a statement
21 that is relatively noncontroversial. It is not the
22 type of thing that a thorough examination of the
23 relationships of these parties would necessarily
24 disprove or as to motivation.
25 And so I believe that until the defense
26 satisfies the burden, which they have, for the
27 purposes of showing that there is information out
28 there, and they're not simply on a fishing 8297

1 expedition, but that there is concrete information
2 that would somehow show that this statement was
3 never made, or, if it was made, had a different
4 meaning, or in fact was a statement that's entirely
5 different from what it was as it's represented by
6 this witness, and I believe that they can do that
7 within the limitations of the Court and within the
8 limitations imposed by the shield law.
9 I have the report to turn over to the Court,
10 if that's permissible.
11 MR. MESEREAU: If I may, Your Honor, there
12 are other reports as well. There's a number of
13 pretext phone calls where he discusses the same
14 issues identified in that police interview.
15 I suspect Miss Sager is going to say they're
16 privileged, but they do relate to the same facts.
17 They give us a good-faith basis, in addition to what
18 I just told the Court, to inquire into his
19 relationship with Konitzer and Schaffel, and what
20 his expectations were, what happened to the money he
21 thought he was going to get, et cetera.
22 I think the Court would have to look at
23 those as well. There aren't that many of them and
24 I have them with me. I also have transcripts of
25 those pretext phone calls.
26 THE COURT: And do both of you agree and
27 stipulate that I can review those reports in
28 conjunction with reaching a decision on this? 8298

1 MR. ZONEN: Yes.

2 MR. MESEREAU: Yes, Your Honor.

3 THE COURT: All right. Would you provide
4 those to me?

5 MR. MESEREAU: Yes.

6 MS. SAGER: Your Honor, we have not been
7 provided with those reports, and for purposes of
8 arguing this motion, it would greatly assist me, if
9 the Court is going to consider them, if we also were
10 allowed to review them.

11 THE COURT: Certainly.

12 MR. ZONEN: I will do so.

13 THE COURT: You can step down. There's no
14 sense in sitting there while we're trying to figure
15 this out.

16 MR. ZONEN: How clean are your copies?

17 MR. MESEREAU: They're pretty clean.

18 MR. ZONEN: Do you just have yellow
19 highlights?

20 MR. MESEREAU: Yeah, but also -- there are
21 transcripts as well.

22 MR. ZONEN: You don't have material written
23 into them?

24 MR. MESEREAU: Not really, no.

25 MR. ZONEN: Okay.

26 MR. MESEREAU: It may take a moment. I'm
27 just trying to staple these reports together, Your
28 Honor. 8299

1 THE COURT: All right.

2 I think what I'd like to do, Lieutenant,

3 would it work all right, when I take these back to

4 read, if I declare a recess? And then you can -- so

5 these folks don't have to sit in here? Is that all

6 right? And then we can bring them back in. It

7 looks like I'm going to be a few minutes reading.

8 LIEUTENANT McKINNY: That's fine, Your Honor.

9 THE COURT: That would give them five

10 minutes' notice to bring them back into the

11 courtroom, or let them, excuse me, back in the

12 courtroom.

13 MR. MESEREAU: Your Honor, I might add that

14 this witness's name comes up in other reports

15 dealing with interviews with other individuals and

16 investigations into other individuals. Information

17 regarding this witness was seized at Schaffel's

18 house, for example.

19 So I don't want to suggest that the scope of

20 examination or the good-faith basis for questions

21 about his relationship with these people are purely

22 based on what I'm giving you. There's other stuff,

23 too.

24 THE COURT: Okay.

25 MR. MESEREAU: May I approach?

26 THE COURT: Yes.

27 All right. Then we'll take this recess.

28 (Recess taken.) 8300

1 THE COURT: Counsel, would you like to
2 retrieve the police reports?
3 THE BAILIFF: I can get them.
4 MR. MESEREAU: Thank you, Your Honor.
5 THE COURT: All right. The Court is going to
6 make the following order: That the Court finds that
7 the probative value of the statement offered by Mr.
8 Drew is questionable; that if the statement was
9 introduced into evidence, the statement might lend
10 itself to proving somewhat the conspiracy, but the
11 only value I see of the statement -- the only
12 evidentiary value of the statement would be to prove
13 Konitzer's state of mind, which is not Mr. Jackson's
14 state of mind, and may very well not be appropriate
15 to admit under any circumstances. Because even
16 though it's a co-conspirator's state of mind, it
17 would be unlikely helpful in proving Mr. Jackson's
18 involvement. It wouldn't prove his involvement.
19 In addition to that, there is some real
20 vagueness in the statement as recalled by the
21 witness, since he does not recall exactly what was
22 said, but more the sense of what was said, and isn't
23 sure where the word "escaped" fit in.
24 Considering these items, in balancing under
25 Delaney, the Court does not believe that the shield
26 law is overcome in this case. The shield law then
27 remains in effect.
28 That effectively bars the defense from 8301

1 cross-examination on the statement which I've
2 already determined to have some questionable value.
3 Therefore, the Court finds the only appropriate
4 remedy is to deny the People's request to admit the
5 statement.

6 MR. ZONEN: Your Honor, we have no further
7 witnesses for the day.

8 THE COURT: What I would like to do is excuse
9 the jury. There's two ways to do that. Probably
10 the cruelest way would be to --

11 MR. ZONEN: Send the bailiff in there?

12 THE COURT: -- file them in here and then
13 tell them. In fact, I don't think I could face
14 them.

15 (Laughter.)

16 THE COURT: No, I better face them, though.

17 Let's bring them in.

18 MS. SAGER: Your Honor, is Mr. Drew excused?

19 THE COURT: I'll be a man about this.

20 Yes. You're excused.

21 MS. SAGER: Thank you.

22 THE COURT: It's my custom to not be on the
23 bench when the jury comes in, so I think I'll leave.

24

25 (The following proceedings were held in
26 open court in the presence and hearing of the
27 jury:)

28 8302

1 THE COURT: Good afternoon.
2 THE JURY: (In unison) Good afternoon.
3 THE COURT: (To counsel) You tell them.
4 (Laughter.)
5 THE COURT: Because of rulings that I've made
6 today, we have no further witnesses.
7 I am advised by the District Attorney that
8 they have two days left in their case, Monday and
9 Tuesday, and they will be full days, without delays.
10 So I apologize for keeping you here all day
11 today like this. I didn't anticipate, of course,
12 the length of time that was going to be involved,
13 and I tried very hard not to do that to you.
14 I know how crummy it is to sit back there
15 and not have anything to do and not know what's
16 going on, and it's just one of my things I just
17 don't do. And we have gone through a lot of days
18 without doing that to you, so I'll try to get
19 through a lot more before it happens again.
20 So I'll see you next week.
21 Court's in recess.
22 (The proceedings adjourned at 1:25 p.m.)
23 --o0o--
24
25
26
27
28 8303

1 REPORTER'S CERTIFICATE

2

3

4 THE PEOPLE OF THE STATE OF)

5 CALIFORNIA,)

6 Plaintiff,)

7 -vs-) No. 1133603

8 MICHAEL JOE JACKSON,)

9 Defendant.)

10

11

12 I, MICHELE MATTSON McNEIL, RPR, CRR, CSR

13 #3304, Official Court Reporter, do hereby certify:

14 That the foregoing pages 8207 through 8303

15 contain a true and correct transcript of the

16 proceedings had in the within and above-entitled

17 matter as by me taken down in shorthand writing at

18 said proceedings on April 29, 2005, and thereafter

19 reduced to typewriting by computer-aided

20 transcription under my direction.

21 DATED: Santa Maria, California,

22 April 29, 2005.

23

24

25

26

27 MICHELE MATTSON McNEIL, RPR, CRR, CSR #3304

28 OFFICIAL COURT REPORTER 8304